

SHERIFF NATHAN GUSTAFSON

April 12, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

Civil No. 3:22-cv-00093-PDW-ARS

Jessica Allen, individually and :
on behalf of the Heirs at Law of :
Lacey Higdem, :

Plaintiff, :

-vs- :

Myles Brunelle, in his individual :
capacity; April Azure, in her :
individual capacity; Rolette :
County; Roy Cordy, MD; and :
Presentation Medical Center, :

Defendants. :

1:22-CV-00041

TRANSCRIPT OF

AUDIOVISUAL DEPOSITION OF SHERIFF NATHAN GUSTAFSON

Taken At
300 West Century Avenue
Bismarck, North Dakota
April 12, 2024

(APPEARANCES AS NOTED HEREIN)

Exhibit Y

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PRESENTATION MEDICAL
CENTER.

ALSO PRESENT:

MR. BRAD LICK, Videographer

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<p style="text-align: center;">4</p> <p>1 (Deposition of SHERIFF NATHAN GUSTAFSON, a 2 witness of lawful age, taken on behalf of the 3 Plaintiff in the above-entitled cause, pending in 4 the District Court of the United States for the 5 District of North Dakota, pursuant to notice, 6 before Stephanie A. Smith, a Registered 7 Professional Reporter and Notary Public in and for 8 the State of North Dakota, at the law offices of 9 Bakke Grinolds Wiederholt, 300 West Century Avenue, 10 in the City of Bismarck, County of Burleigh, State 11 of North Dakota, on the 12th day of April, 2024, 12 commencing at 8:31 a.m., counsel appearing on 13 behalf of the respective parties as hereinbefore 14 indicated:) 15 ----- 16 (The following proceedings were had and 17 made of record:) 18 THE VIDEOGRAPHER: This is the audiovisual 19 deposition of Sheriff Nathan Gustafson being taken 20 on behalf of the plaintiffs in the matter of 21 Jessica Allen, et al., plaintiffs, versus -- versus 22 Myles Brunelle, et al., defendants. 23 This deposition is being held on April 12, 24 2024, at the offices of Bakke Grinolds Wiederholt 25 at 300 West Century Avenue, Bismarck, North Dakota</p>	<p style="text-align: center;">6</p> <p>1 deposition -- I understand you're represented by 2 Mr. Bakke so I don't want to hear about 3 conversations that you've had with Mr. Bakke, but I 4 am curious if you've reviewed anything specifically 5 with an eye toward getting ready for your 6 deposition. 7 A. Yes. 8 Q. Okay. Tell me what you've reviewed, 9 please. And, again, specifically with regard to 10 the depo. 11 A. Several documents. I believe it was 12 Zachmeier's deposition and Kim Nadeau and Dixie 13 Gladue. Also some policies from that time. 14 Q. Anything else you can think of? And 15 that -- those are, in fact, documents. You're 16 right. Anything else in terms of documents, video, 17 photographs, reports? 18 A. No. Not that I remember. 19 Q. And do you remember Zachmeier in his 20 deposition, he testified that you -- it was his 21 understanding that you fired Brunelle and Azure. 22 Did you remember reading that in his deposition? 23 A. Correct. I remember reading that, yes. 24 Q. Is he wrong about that? 25 A. Yes.</p>
<p style="text-align: center;">5</p> <p>1 commencing at 8:31 a.m. 2 My name is Brad Lick and I'm the 3 videographer. The court reporter and notary public 4 is Stephanie Smith. 5 Will counsel please state their 6 appearances. 7 MR. NOEL: Andrew Noel for the plaintiff, 8 and my colleague Julie Moroney will be here 9 shortly. There will be a minor disruption when she 10 comes in with some copies that she's out making. 11 MR. GRANT BAKKE: Grant Bakke for Rolette 12 County, April Azure and Myles Brunelle. 13 MR. HANSON: And Randall Hanson for 14 Presentation Medical Center and Dr. Roy Cordy. 15 SHERIFF NATHAN GUSTAFSON, 16 being first duly sworn, was examined and testified 17 as follows: 18 EXAMINATION 19 BY MR. NOEL: 20 Q. Okay. Sheriff, you understand we're here 21 to talk about primarily a death that happened in 22 custody at the Rolette County Jail back in June of 23 2020, I assume; right? 24 A. Yes. 25 Q. Did you in preparation for your</p>	<p style="text-align: center;">7</p> <p>1 Q. Did you tell him you fired the two of 2 them? 3 A. I don't recall. 4 Q. Did you give -- did you try to give anyone 5 the impression that you fired Brunelle and Azure? 6 A. That's tough to say if I gave somebody the 7 impression. If I -- if I say something and you 8 take it a different way, I -- I don't understand 9 your question, I guess. 10 Q. Did you think about firing them for what 11 they did and didn't do with Lacey? 12 MR. GRANT BAKKE: Object to form. 13 THE WITNESS: I thought of a lot of 14 different -- 15 Q. (MR. NOEL CONTINUING) Did you -- 16 A. A lot of different things came into 17 consideration. 18 Q. Okay. Did you think about firing them 19 because of was -- what they did or didn't do with 20 regard to Lacey? You understand they got convicted 21 of crimes because of what happened here. 22 MR. GRANT BAKKE: Objection. Form. 23 THE WITNESS: I -- it feels like you're 24 asking several different questions in that. 25 Q. (MR. NOEL CONTINUING) Okay. I'll go back</p>

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<p style="text-align: right;">8</p> <p>1 to the -- the simple one.</p> <p>2 A. Yeah.</p> <p>3 Q. Did you think about firing Myles and April</p> <p>4 because of what they did or didn't do with regard</p> <p>5 to Lacey?</p> <p>6 MR. GRANT BAKKE: Same objection.</p> <p>7 THE WITNESS: I -- I feel I took a lot of</p> <p>8 things into consideration and weighed out the</p> <p>9 options.</p> <p>10 Q. (MR. NOEL CONTINUING) Okay. Well, we</p> <p>11 might as well dig into that. What did you take</p> <p>12 into consideration? First of all, did you consider</p> <p>13 firing them because of the Higdem incident?</p> <p>14 A. When I said I took in all the</p> <p>15 considerations and all the options, yes, that was</p> <p>16 one of the options and considerations. Yes.</p> <p>17 Q. All right. And what led you to let them</p> <p>18 quit?</p> <p>19 A. I believe the outcome was the same. They</p> <p>20 were no longer with me.</p> <p>21 MR. NOEL: Is that Julie? Oh, the door</p> <p>22 just came open.</p> <p>23 THE WITNESS: Would you like me to keep</p> <p>24 going or would you like me to wait?</p> <p>25 Q. (MR. NOEL CONTINUING) No. Keep going.</p>	<p style="text-align: right;">10</p> <p>1 A. I don't know if I would put it --</p> <p>2 Q. Chief --</p> <p>3 A. -- that way.</p> <p>4 Q. You're the CEO of law enforcement in the</p> <p>5 whole county; right?</p> <p>6 A. Correct.</p> <p>7 Q. Do you understand that there is a</p> <p>8 substantial difference between firing a</p> <p>9 correctional officer and allowing a correctional</p> <p>10 officer to resign?</p> <p>11 A. Say that one more time.</p> <p>12 Q. Do you understand that there's a</p> <p>13 substantial difference between firing a</p> <p>14 correctional officer and allowing a correctional</p> <p>15 officer to resign for personal reasons?</p> <p>16 MR. GRANT BAKKE: Objection. Calls for a</p> <p>17 legal conclusion.</p> <p>18 THE WITNESS: I guess I'm unaware.</p> <p>19 Q. (MR. NOEL CONTINUING) Did you know that</p> <p>20 April Azure is a correctional officer right now?</p> <p>21 A. I believe she is one in Bottineau County.</p> <p>22 Q. Do you think she would have got that job</p> <p>23 if you would have fired her from Rolette County?</p> <p>24 MR. GRANT BAKKE: Objection. Calls for</p> <p>25 speculation.</p>
<p style="text-align: right;">9</p> <p>1 A. Okay. So the outcome was -- was the same</p> <p>2 where they no -- they were no longer employed with</p> <p>3 Rolette County or Sheriff Nathan Gustafson.</p> <p>4 Q. Did you want them to no longer be employed</p> <p>5 with you because of what they did or didn't do with</p> <p>6 Lacey?</p> <p>7 MR. GRANT BAKKE: Object to form.</p> <p>8 THE WITNESS: I -- I feel like I already</p> <p>9 answered that one. Sorry. They --</p> <p>10 Q. (MR. NOEL CONTINUING) When -- go ahead.</p> <p>11 A. I took in several things -- or I took in</p> <p>12 multiple considerations on whether to terminate</p> <p>13 them or -- or they ultimately resigned. The</p> <p>14 outcome was the same where they were no longer with</p> <p>15 me. And at the end of the day I didn't -- well,</p> <p>16 when you fire somebody, it -- I didn't want to be</p> <p>17 able to not let them provide money to put food on</p> <p>18 the table for themselves or their families. So the</p> <p>19 resignation was the end -- the same goal as the</p> <p>20 termination.</p> <p>21 Q. That answers my question.</p> <p>22 A. Okay.</p> <p>23 Q. Thank you.</p> <p>24 Now, as Rolette County sheriff, you're the</p> <p>25 CEO of the whole county; right?</p>	<p style="text-align: right;">11</p> <p>1 THE WITNESS: I guess I -- I wouldn't know</p> <p>2 how to -- I can't predict the future.</p> <p>3 Q. (MR. NOEL CONTINUING) Did -- but you</p> <p>4 wanted to allow them a chance to work again in the</p> <p>5 field that they were working; right?</p> <p>6 A. I don't know if I would put it that way.</p> <p>7 I just wanted them to be able to get another job to</p> <p>8 be able to provide for their families.</p> <p>9 Q. Okay. Did they beg and plead with you not</p> <p>10 to fire them?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did they ask you in any way not to fire</p> <p>13 them?</p> <p>14 A. Four years ago, I -- I don't recall.</p> <p>15 Q. Did Bottineau County, any of its personnel</p> <p>16 give you a call to ask about April?</p> <p>17 A. I don't remember them calling myself. I</p> <p>18 know they -- it was either Matt Schimetz or</p> <p>19 Tanner -- and I can't remember Tanner's last name</p> <p>20 from Bottineau -- I believe one of them called or</p> <p>21 asked around, but I -- that was just kind of</p> <p>22 hearsay. I -- I don't remember anybody talking to</p> <p>23 me.</p> <p>24 Q. Well, how long was April with you as a CO</p> <p>25 in Rolette County?</p>

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<p style="text-align: right;">12</p> <p>1 A. Oh, I apologize, I've gone through so many</p> <p>2 employees, I -- I don't recall how long.</p> <p>3 Q. All right. Did you ever communicate</p> <p>4 anything to Bottineau about April's tenure at</p> <p>5 Rolette County?</p> <p>6 A. I don't believe anybody reached out to me.</p> <p>7 Q. Okay. And you became the sheriff in,</p> <p>8 what -- on January 1 of 2019?</p> <p>9 A. Correct.</p> <p>10 Q. How many Rolette County -- are you in</p> <p>11 charge of hiring and firing --</p> <p>12 A. Correct.</p> <p>13 Q. -- essentially --</p> <p>14 A. Correct.</p> <p>15 Q. How many employees have you had to fire</p> <p>16 from when you started to up to Lacey's death?</p> <p>17 A. I've -- I've never thought about that. I</p> <p>18 essentially went through most of the deputies in --</p> <p>19 in December of 2018 when I -- the election was</p> <p>20 November, so I knew I was going to take office</p> <p>21 January 1. In December I had a meeting with staff</p> <p>22 and that included the deputies and corrections. I</p> <p>23 advised everybody that they would have to reapply</p> <p>24 so I could review applications. In essence, when I</p> <p>25 went through that, I -- I let go 80 to 90 percent</p>	<p style="text-align: right;">14</p> <p>1 entities or other places. So since '07, I've --</p> <p>2 I've unofficially been watching and seeing, and</p> <p>3 I -- I thought deputies and officers could have</p> <p>4 did -- could be better. Could always improve.</p> <p>5 Q. (MR. NOEL CONTINUING) Yeah.</p> <p>6 A. So I -- that -- that was my main focus</p> <p>7 when I took office in 2019 because that's where all</p> <p>8 the complaints that -- the reason I ran for sheriff</p> <p>9 would be the -- the deputies and the law</p> <p>10 enforcement side on the road. So that was my main</p> <p>11 focus, and it was 80 to a 90 percent turnover rate</p> <p>12 or letting people go, if that answers your</p> <p>13 question. Sorry.</p> <p>14 Q. Yeah. And what -- so were those -- either</p> <p>15 people that left or people that -- that you let go,</p> <p>16 was that based primarily about -- on your history</p> <p>17 of knowledge with them as opposed to something that</p> <p>18 they had done a day, the week, the month before?</p> <p>19 A. Oh, it would have been nothing that would</p> <p>20 have been a quick reason.</p> <p>21 Q. Yeah.</p> <p>22 A. It would have been a long consideration.</p> <p>23 Q. Yeah. Have you ever -- setting those</p> <p>24 aside, have you ever had to fire a Rolette County</p> <p>25 employee because of one bad thing that happened?</p>
<p style="text-align: right;">13</p> <p>1 of my deputies.</p> <p>2 Q. Okay.</p> <p>3 A. I don't recall letting go of any of the</p> <p>4 correction officers, and I believe they -- there</p> <p>5 might have been one or two that didn't apply. I</p> <p>6 don't really remember that part, but I had some</p> <p>7 that -- that left soon after I took office, one or</p> <p>8 two. I -- I don't recall. But, no, I didn't -- I</p> <p>9 don't remember letting go any corrections.</p> <p>10 Q. So that was like an initial kind of review</p> <p>11 of the team and -- and what you wanted to be part</p> <p>12 of the team?</p> <p>13 A. I've been in law enforcement since 2007</p> <p>14 and I've never worked anywhere else besides Rolette</p> <p>15 County or Rolla PD and -- as far as law enforcement</p> <p>16 capacity goes. So in that time, I've -- I've</p> <p>17 got -- I've been not purposely evaluating, but when</p> <p>18 you work hand in hand, you -- you see people's work</p> <p>19 ethic. And Rolette County is a unique place.</p> <p>20 If -- if we hire an outside person from -- from out</p> <p>21 of town or another state, there -- they don't last</p> <p>22 very long. They end up leaving.</p> <p>23 (Ms. Moroney entered the conference room.)</p> <p>24 THE WITNESS: But some that are from our</p> <p>25 area maybe would do better at other -- other</p>	<p style="text-align: right;">15</p> <p>1 A. I apologize, I don't -- I don't recall.</p> <p>2 Q. What sorts of -- setting aside that</p> <p>3 initial kind of review of the -- of the troops,</p> <p>4 what sorts of reasons do you remember having for --</p> <p>5 for firing people while you were sheriff?</p> <p>6 A. And we're talking about the deputies;</p> <p>7 correct?</p> <p>8 Q. Well, we're talking about -- so who -- you</p> <p>9 have oversight over the deputies and the</p> <p>10 correctional officers; right?</p> <p>11 A. Yes.</p> <p>12 Q. Do you refer to correctional officers as</p> <p>13 deputies?</p> <p>14 A. No.</p> <p>15 Q. And you have responsibilities essentially</p> <p>16 for everyone in the Rolette County Sheriff's</p> <p>17 Department?</p> <p>18 A. That is correct.</p> <p>19 Q. So within the Rolette County Sheriff's</p> <p>20 Department, I'm curious about reasons that you've</p> <p>21 had for terminating people's employment. And I --</p> <p>22 I don't expect you to list them all. I'm just</p> <p>23 looking for some examples.</p> <p>24 A. The -- the -- it would be a -- it would be</p> <p>25 a list. There -- there's so many. That -- so the</p>

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<p style="text-align: right;">16</p> <p>1 deputies in 2019 or in December of 2018 when I</p> <p>2 was -- when I had the meeting with the deputies, it</p> <p>3 was failure to follow up on cases, failure to</p> <p>4 complete investigations, failure to activate a</p> <p>5 case. It -- failure to perform their duties, I</p> <p>6 guess, under an umbrella on that side.</p> <p>7 On the other side, I would call it false</p> <p>8 statements now, but I -- lying, whether it was</p> <p>9 timecards or -- or -- or events, and I guess that</p> <p>10 would be more towards our first jail administrator</p> <p>11 after myself would have been Titus Whitebody. That</p> <p>12 would have been some of the reasons for him was</p> <p>13 lying and not communicating and going above and</p> <p>14 beyond like his abilities with budget.</p> <p>15 And I -- I understood a little bit where</p> <p>16 he was coming from, where he came from BIA</p> <p>17 facilities and then he came to a not-so-financial</p> <p>18 place with Rolette County where he could order</p> <p>19 \$10,000 worth of stuff at another facility. With</p> <p>20 us, that wasn't an option. So it was hard for him</p> <p>21 to transition over. Hiring, firing goes through</p> <p>22 me, and he hired and fired people without my</p> <p>23 knowledge. So I guess just to list a couple, that</p> <p>24 would have been some of them. And I -- I don't</p> <p>25 recall every single one, but --</p>	<p style="text-align: right;">18</p> <p>1 Q. You know Robert Werlinger?</p> <p>2 A. Yes.</p> <p>3 Q. Did you find that either one of those two</p> <p>4 guys was tougher on you than the other?</p> <p>5 A. No. They were pretty equal.</p> <p>6 Q. Did you have any beef with what Anderson</p> <p>7 and Werlinger were relaying to you in terms of</p> <p>8 necessary improvements?</p> <p>9 A. Can you repeat that? I'm sorry.</p> <p>10 Q. Did you have any problem with -- when --</p> <p>11 that's -- that's not the right way to say it.</p> <p>12 Did you disagree with anything that</p> <p>13 Anderson or Werlinger relayed to you about</p> <p>14 necessary improvements?</p> <p>15 MR. GRANT BAKKE: Object to form. Vague.</p> <p>16 THE WITNESS: Yeah, that's a tough one to</p> <p>17 answer. I -- I mean, I can -- if -- if you said</p> <p>18 it's dark and gloomy outside and there's only one</p> <p>19 cloud, I -- I guess I don't know how to answer your</p> <p>20 question. Sorry.</p> <p>21 Q. (MR. NOEL CONTINUING) Well, they're in</p> <p>22 charge of keeping your jail in compliance with the</p> <p>23 standards; correct?</p> <p>24 A. Correct.</p> <p>25 Q. They found -- in fact, Lance Anderson</p>
<p style="text-align: right;">17</p> <p>1 Q. Sure.</p> <p>2 A. -- just to give some examples.</p> <p>3 THE WITNESS: I'm not going too fast for</p> <p>4 you, am I.</p> <p>5 THE REPORTER: No.</p> <p>6 Q. (MR. NOEL CONTINUING) So let's take the</p> <p>7 jail operations now specifically --</p> <p>8 A. Okay.</p> <p>9 Q. -- and -- and terminations. You -- you</p> <p>10 terminated Whitebody; correct?</p> <p>11 A. Correct.</p> <p>12 Q. In your tenure as sheriff, have you had to</p> <p>13 terminate anyone else whose primary responsibility</p> <p>14 was jail-operation related?</p> <p>15 A. I don't recall.</p> <p>16 Q. Okay. What about Kim Nadeau?</p> <p>17 A. Can you specify your --</p> <p>18 Q. Did you ever fire Kim Nadeau as jail</p> <p>19 administrator?</p> <p>20 A. No.</p> <p>21 Q. Okay. Did you ever tell the DOCR that you</p> <p>22 fired Kim Nadeau as jail administrator?</p> <p>23 A. I don't recall saying that.</p> <p>24 Q. You know Lance Anderson?</p> <p>25 A. I do.</p>	<p style="text-align: right;">19</p> <p>1 testified yesterday -- that the Rolette County Jail</p> <p>2 had a pattern of noncompliance with certain</p> <p>3 standards from 2018 through Lacey's death.</p> <p>4 MR. GRANT BAKKE: Object as</p> <p>5 mischaracterization.</p> <p>6 Q. (MR. NOEL CONTINUING) Would that surprise</p> <p>7 you that he would say that?</p> <p>8 MR. GRANT BAKKE: Object as</p> <p>9 mischaracterization.</p> <p>10 MR. NOEL: It's not.</p> <p>11 THE WITNESS: I can't speak on that. I</p> <p>12 wasn't sheriff in 2018, so I don't -- I wouldn't --</p> <p>13 2019 was my first inspection. I wouldn't be able</p> <p>14 to say there's a pattern. I wouldn't be able to</p> <p>15 say that. So I -- I guess I don't know.</p> <p>16 Q. (MR. NOEL CONTINUING) So you can't</p> <p>17 disagree with him on that?</p> <p>18 A. Can't disagree or agree, I guess. I --</p> <p>19 Q. All right. Well, you came on January 1,</p> <p>20 2019; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Did you look at the -- what was your</p> <p>23 platform? How'd you want -- how'd you go about</p> <p>24 getting elected? What did you say you were going</p> <p>25 to do, change?</p>

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<p style="text-align: right;">20</p> <p>1 A. I believe I -- with my opening, we -- I</p> <p>2 focused on the deputy side. That's where the</p> <p>3 complaints from Rolette County came in was --</p> <p>4 Q. Okay.</p> <p>5 A. -- on the road.</p> <p>6 Q. And when you came on in January 1 of 2019,</p> <p>7 you're in charge of the jail that day; right?</p> <p>8 A. Correct.</p> <p>9 Q. And did you have an opportunity to review</p> <p>10 the DOCR's 2018 inspection of the jail that found</p> <p>11 deficiencies after you started?</p> <p>12 A. I -- I did not.</p> <p>13 Q. Okay. Why not?</p> <p>14 A. I don't believe I was jail administrator</p> <p>15 at that time.</p> <p>16 Q. Who was?</p> <p>17 A. I believe when I got elected it was still</p> <p>18 Kim Nadeau.</p> <p>19 Q. Okay. Did you task Kim -- did you ask Kim</p> <p>20 anything about what was the last inspection, are we</p> <p>21 good, do we need to fix anything?</p> <p>22 A. No.</p> <p>23 Q. You expected her to handle that?</p> <p>24 A. I guess "expected" is a different word.</p> <p>25 I -- I would -- she was doing the job and I was</p>	<p style="text-align: right;">22</p> <p>1 Q. When your -- your first year as sheriff is</p> <p>2 2019 --</p> <p>3 A. Okay.</p> <p>4 Q. -- and I'm wondering if during that year</p> <p>5 whether it was important to you to ensure that the</p> <p>6 Rolette County Jail complied with the North Dakota</p> <p>7 State standards, constitutional standards, State</p> <p>8 law standards?</p> <p>9 A. Yes. My goal was to perform my sheriff</p> <p>10 duties, which is a very big umbrella, the best of</p> <p>11 my abilities for the people of Rolette County.</p> <p>12 Q. When you became sheriff, did you have any</p> <p>13 correctional experience?</p> <p>14 A. No.</p> <p>15 Q. You've got a stack of exhibits there. Can</p> <p>16 you locate Exhibit 81 for me. It's at the back of</p> <p>17 the stack.</p> <p>18 So it's my understanding that Exhibit 81</p> <p>19 would have been a DOCR yearly inspection dated</p> <p>20 December 4 of 2018 which would have went down</p> <p>21 shortly before you became sheriff; correct?</p> <p>22 A. If it says December 4 of 2018, yes, that</p> <p>23 was before I was sheriff.</p> <p>24 Q. All right. And you see it's -- the</p> <p>25 facility administrator is listed as Kimberly Nadeau</p>
<p style="text-align: right;">21</p> <p>1 never aware or anything brought to my attention</p> <p>2 when I took office of any issues.</p> <p>3 Q. Okay. Well, you realize if something bad</p> <p>4 goes down at the jail, it's on you?</p> <p>5 MR. GRANT BAKKE: Object to form.</p> <p>6 THE WITNESS: I understand.</p> <p>7 Q. (MR. NOEL CONTINUING) Okay. So did you</p> <p>8 know about the Oscar Wilkie death?</p> <p>9 A. Vaguely.</p> <p>10 Q. Okay. Did you know what the DOCR had to</p> <p>11 say about Oscar Wilkie's death during your first</p> <p>12 year as sheriff? Take that first year. Do you</p> <p>13 have any idea what the DOCR had to say about how</p> <p>14 your jail performed for the Oscar Wilkie?</p> <p>15 A. I don't remember in detail, but I -- yeah,</p> <p>16 I can't answer that question because I don't</p> <p>17 remember a hundred percent.</p> <p>18 Q. Was it important for you when you took</p> <p>19 over that first year in 2019 to ensure that the</p> <p>20 jail ran in compliance with the North Dakota</p> <p>21 standards, the constitutional standards and the</p> <p>22 State law standards?</p> <p>23 A. I'm -- can you read that to me or --</p> <p>24 Q. Yeah.</p> <p>25 A. -- ask me that one more time?</p>	<p style="text-align: right;">23</p> <p>1 and the inspectors are Anderson and Werlinger;</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And then if you go to -- I will say</p> <p>5 there's a lot of stuff in here that the jail is</p> <p>6 compliant on. Okay? So I'm not -- I'm not -- I'm</p> <p>7 trying to save time and not go through all that</p> <p>8 stuff.</p> <p>9 A. Okay.</p> <p>10 Q. But I don't want you to think I'm being</p> <p>11 unfair. I do want you to go to page 12 of 30 of</p> <p>12 Exhibit 81.</p> <p>13 A. Okay.</p> <p>14 Q. And this is -- has Standard 32. It says</p> <p>15 Inmate Observation, and it says the Rolette County</p> <p>16 Jail is not compliant; correct?</p> <p>17 A. I'm going to have to read the whole thing.</p> <p>18 Q. That's okay.</p> <p>19 A. Okay. And your question was we were</p> <p>20 noncompliant; correct?</p> <p>21 Q. Correct. Simple as that.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And it looks like from the first</p> <p>24 page that obviously the administrator was Kim, and</p> <p>25 do you have any reason to disbelieve that these</p>

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<p style="text-align: right;">24</p> <p>1 findings -- compliance, noncompliance -- were</p> <p>2 relayed by the DOCR to Kim?</p> <p>3 A. I don't know. I wasn't there.</p> <p>4 Q. Okay. And then if you -- in the</p> <p>5 Observations section on page 12 of 30 of</p> <p>6 Exhibit 81, it says that records reflect that</p> <p>7 individuals were placed in RCLEC who were</p> <p>8 exhibiting suicidal behavior and signs of a mental</p> <p>9 health disorder and were not placed within hearing</p> <p>10 distance. The staff failed to conduct and document</p> <p>11 direct in-person surveillance every 15 minutes on</p> <p>12 an irregular basis.</p> <p>13 Did I read that correctly?</p> <p>14 A. Correct.</p> <p>15 Q. Do you know if -- with regard to Lacey's</p> <p>16 death, if the DOCR violated the Rolette County Jail</p> <p>17 on Standard 32 as well? It's not on that document.</p> <p>18 A. I'd have to read their report again.</p> <p>19 Q. Okay. As you sit here today, can you tell</p> <p>20 me what the DR -- what the DOCR found in terms of</p> <p>21 noncompliance on the part of the Rolette County</p> <p>22 Jail with Lacey?</p> <p>23 A. I don't recall the -- I -- I'd have to see</p> <p>24 the documents. Sorry.</p> <p>25 Q. Okay. Why did the DOCR tell you they were</p>	<p style="text-align: right;">26</p> <p>1 Q. -- tell you why they were shutting it</p> <p>2 down?</p> <p>3 A. They gave us a -- the -- the paperwork,</p> <p>4 yes --</p> <p>5 Q. Okay.</p> <p>6 A. -- to explain the things.</p> <p>7 Q. And all I'm wondering right now -- because</p> <p>8 we're going to go through the paperwork. I'm</p> <p>9 wondering as --</p> <p>10 A. Okay.</p> <p>11 Q. -- you sit here right now, can you explain</p> <p>12 to me in -- in your words while the jail was shut</p> <p>13 down after Lacey's death?</p> <p>14 A. I'd have to read through their -- I</p> <p>15 haven't read -- it's not something I read every day</p> <p>16 or that I've read every day.</p> <p>17 Q. Okay. How many inmates have died on your</p> <p>18 watch at the Rolette County Jail?</p> <p>19 A. One.</p> <p>20 Q. Now, when Lance Anderson talked about</p> <p>21 Exhibit 81 and that page 12 of 30, he testified</p> <p>22 that the -- that the DOCR's observation on inmate</p> <p>23 observation reflected a life safety concern. Do</p> <p>24 you understand that phraseology, life safety</p> <p>25 concerns?</p>
<p style="text-align: right;">25</p> <p>1 shutting you down?</p> <p>2 A. They didn't -- it stemmed from the passing</p> <p>3 of Lacey.</p> <p>4 Q. Okay. But Wilkie died and they didn't</p> <p>5 shut it down then; right?</p> <p>6 A. I wasn't part of the facility at that</p> <p>7 time.</p> <p>8 Q. You can't answer that question?</p> <p>9 A. I -- yeah, I have no knowledge of that</p> <p>10 one.</p> <p>11 Q. So did they tell you -- did they just tell</p> <p>12 you we're -- somebody died so we're shutting you</p> <p>13 down?</p> <p>14 A. Well, they -- they performed a -- an</p> <p>15 investigation and then they had a -- what we call a</p> <p>16 closeout or a closure -- or closeout, sorry, where</p> <p>17 they -- it's basically a debrief where they visit</p> <p>18 with us after their investigation or after their</p> <p>19 inspections.</p> <p>20 Q. And?</p> <p>21 A. Oh, I'm sorry. I --</p> <p>22 Q. Did --</p> <p>23 A. -- repeat --</p> <p>24 Q. Did they --</p> <p>25 A. -- your question.</p>	<p style="text-align: right;">27</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you agree with him that the</p> <p>3 observation that we see in December of 2018 on</p> <p>4 Standard 32 sounds like a life safety concern?</p> <p>5 A. I --</p> <p>6 MR. GRANT BAKKE: Object to form.</p> <p>7 THE WITNESS: -- wasn't part of it. I</p> <p>8 can't answer that.</p> <p>9 Q. (MR. NOEL CONTINUING) Yes, you can.</p> <p>10 A. I wasn't there.</p> <p>11 Q. But don't you get reports on jail</p> <p>12 inspections all the time as sheriff?</p> <p>13 A. From the time I'm sheriff moving forward,</p> <p>14 yes.</p> <p>15 Q. Right. But you're not limited here</p> <p>16 today -- I can ask you about internal affairs</p> <p>17 reviews you did with the City of Rolla in 2015 if I</p> <p>18 wanted to. Okay?</p> <p>19 A. Okay.</p> <p>20 Q. So as you read the observation from</p> <p>21 December of 2018 by the DOCR that was communicated</p> <p>22 to Kim Nadeau, does that sound to you like a life</p> <p>23 safety concern?</p> <p>24 A. I don't know. I wasn't part of this place</p> <p>25 at that time, so I don't feel comfortable saying I</p>

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<p style="text-align: right;">28</p> <p>1 agree or disagree with something where I wasn't</p> <p>2 part of.</p> <p>3 Q. Okay. Comfort is not the test for</p> <p>4 answering questions today. Okay? So if you don't</p> <p>5 know, then you can tell me you don't know.</p> <p>6 Otherwise, I'm not necessarily concerned about your</p> <p>7 comfort level with answering questions.</p> <p>8 So what's the answer? You read that.</p> <p>9 A. I --</p> <p>10 Q. Let me tell you what I think. I read that</p> <p>11 to reflect a serious life safety concern that the</p> <p>12 DOCR had in December of '28 [sic] with the Rolette</p> <p>13 County Jail. Do you read it the same way or not?</p> <p>14 A. I don't know.</p> <p>15 Q. Perfect.</p> <p>16 What in your view are the most important</p> <p>17 functions of a jail?</p> <p>18 A. What is the most important function --</p> <p>19 Q. Yeah.</p> <p>20 A. -- of a jail?</p> <p>21 Q. I mean, what -- yeah, if you were going to</p> <p>22 talk to me at a cocktail party and I'm thinking</p> <p>23 about getting into correction work and you're the</p> <p>24 top dog at a county jail, explain to me what you</p> <p>25 think is important about effectively running a</p>	<p style="text-align: right;">30</p> <p>1 school because of the Lacey situation?</p> <p>2 A. To become the jail administrator, I</p> <p>3 believe that was one of the requirements that I had</p> <p>4 to complete.</p> <p>5 Q. All right. Did you learn anything at CO</p> <p>6 school that you didn't know before?</p> <p>7 A. There's always something to learn at every</p> <p>8 training. It was a monthlong training. I'm sure I</p> <p>9 picked up a couple things. Off the top of my head,</p> <p>10 I can't recall. That was --</p> <p>11 Q. I understand.</p> <p>12 A. -- years ago.</p> <p>13 Q. Right.</p> <p>14 Rolette County is not a wealthy county;</p> <p>15 fair to say?</p> <p>16 A. Correct.</p> <p>17 Q. We've heard testimony from a number of</p> <p>18 people talking about it's one of the -- it's one of</p> <p>19 the most poor counties in North Dakota. Is that</p> <p>20 consistent with your understanding?</p> <p>21 A. I believe we're top five in poverty --</p> <p>22 Q. All right.</p> <p>23 A. -- out of 53 counties.</p> <p>24 Q. And the commissioners -- are the</p> <p>25 commissioners the ones who control the purse</p>
<p style="text-align: right;">29</p> <p>1 county jail. I realize that's a different</p> <p>2 question, but let's do that.</p> <p>3 A. Housing inmates, providing for the</p> <p>4 inmates. The -- the text -- there's the ability</p> <p>5 for school or the help with their probation</p> <p>6 officers. Treatment facilities. There's --</p> <p>7 there's so many things that correction officers do</p> <p>8 in the jail, but housing and -- and maintaining the</p> <p>9 well-being for -- for inmates.</p> <p>10 Q. Okay. And when you at any point -- you've</p> <p>11 never been to correctional officer school; correct?</p> <p>12 A. False.</p> <p>13 Q. You have been?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Tell me when you did that.</p> <p>16 A. I believe it was 2020.</p> <p>17 Q. And did you get the certification?</p> <p>18 A. Correct.</p> <p>19 Q. Do you remember when you got the -- I</p> <p>20 realize you said 2020, but do you know when?</p> <p>21 A. I don't remember exact date. I did it in</p> <p>22 Ward County. There was snow on the ground. It may</p> <p>23 have been December. I'm not -- I don't re -- I</p> <p>24 don't have my documents that say.</p> <p>25 Q. Did some -- did the DOCR send you to CO</p>	<p style="text-align: right;">31</p> <p>1 strings in 2020 for you?</p> <p>2 A. They are in control of the budget, yes.</p> <p>3 Q. Do you know how much cash on hand Rolette</p> <p>4 County had year end 2020?</p> <p>5 A. I don't recall. It -- it changes every</p> <p>6 year.</p> <p>7 Q. Do you think -- first, did -- did you ever</p> <p>8 watch any video of Lacey while she was in your jail</p> <p>9 from 2020 to now?</p> <p>10 A. I have, yes.</p> <p>11 Q. Okay. What videos have you watched?</p> <p>12 A. I believe it was the -- and I don't recall</p> <p>13 if it was with Lance Anderson or BCI Zachmeier. I</p> <p>14 don't recall. I know I watched it. I believe it</p> <p>15 was the booking process and the cell.</p> <p>16 Q. And --</p> <p>17 A. And I believe I watched it twice.</p> <p>18 Q. Okay. And there was the booking process,</p> <p>19 I'm tracking you perfectly on that. The cell,</p> <p>20 there was like -- there's like eight, nine hours.</p> <p>21 A. Correct.</p> <p>22 Q. Do you remember which parts you watched or</p> <p>23 did you watch the whole thing?</p> <p>24 A. I -- I believe I watched it in</p> <p>25 fast-forward. I -- I don't recall who I watched it</p>

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<p style="text-align: right;">32</p> <p>1 with, whether it was Lance Anderson or Craig 2 Zachmeier, but it -- I remember it going fast. 3 Q. And when -- did that viewing happen once? 4 That's -- that -- let me say it like this: Did you 5 ever go back and watch video of Lacey again? 6 A. The -- the initial one -- and, again, I 7 don't remember who I watched it with, and then it 8 would have been sometime after Lance Anderson 9 and -- had brought it to my office, and the 10 commissioners and our auditor sho -- came to -- I 11 was unaware of that -- and he played the video 12 for -- for everybody. So that was the second time 13 I saw it. 14 Q. And was -- was what you saw that time 15 similar in scope to what you saw the first time or 16 was it shorter the second time? 17 A. Shorter the second time. 18 Q. Do you remember what portions specifically 19 they showed the second time? 20 A. In the cell. 21 Q. Do you remember events that they showed 22 the second time, events within the cell? 23 A. I don't remember all of them other than 24 the end. 25 Q. The -- the life sa -- the discovery and</p>	<p style="text-align: right;">34</p> <p>1 Q. So ultimately the temporary closure order 2 is -- is final and you guys have to comply with it 3 until you can get opened back up; fair to say? 4 A. Correct. 5 Q. Now, with regard to the Lacey Higdem 6 death, do you -- do you blame finances or budgetary 7 constraints for anything that happened or didn't 8 happen during her course at the facility? 9 MR. GRANT BAKKE: Object to form. 10 THE WITNESS: Sorry. I -- I got caught up 11 on the blame one. Can you read that to me one more 12 time? 13 Q. (MR. NOEL CONTINUING) Yeah. Do you think 14 finances -- lack of finances or budgetary concerns 15 played any role in Lacey's death at your facility 16 in 2020? 17 MR. GRANT BAKKE: Same objection. 18 THE WITNESS: I -- I -- to answer that, 19 I -- I don't know if that's going to be the -- the 20 way you'd like it answered, I apologize, but due to 21 our lack of funding at -- at our facility, other 22 areas have more workers, more -- more correction 23 officers. So seeing where we are today, I would 24 have liked more employees, but I'm sure sheriffs 25 ten years ago would have liked more employees</p>
<p style="text-align: right;">33</p> <p>1 the life saving? 2 A. Correct. 3 Q. Is there a -- a process when you get 4 the -- the temporary closure order for the county 5 to appeal that? 6 A. I believe there was an appeal process, 7 yes. 8 Q. Did -- 9 A. The appeal process -- I'm sorry. I cut 10 you off. 11 Q. No. No. Go ahead. 12 A. The appeal process went to DOCR who did 13 the investigation and the closure. So the -- the 14 appeal process went to the same people. 15 Q. Right. Kind of like a county 16 investigating itself. You don't have to answer 17 that. 18 So did the county appeal or not? 19 A. I believe we did, yes. 20 Q. All right. And what was the -- what was 21 your understanding of the -- the basis of the 22 appeal? 23 A. It was denied. I don't remember the 24 specifics. I'd have to read the -- the letter or 25 the email or whatever it was.</p>	<p style="text-align: right;">35</p> <p>1 everywhere, not just our area. So I think 2 everybody always wants more employees. So I -- I 3 guess I don't know. 4 Q. (MR. NOEL CONTINUING) By "other areas," 5 you mean other counties and stuff? Not other areas 6 of the jail. 7 A. Correct. Other counties. Other cities. 8 Other facilities. 9 Q. Do you -- do you believe that the lack of 10 enough COs in June of 2020 played a role in Lacey's 11 death? 12 A. I don't know. 13 Q. Did you ever go -- so when you become 14 sheriff January 2019, Lacey's death happens in 15 June -- June 4 of 2020. Between those two times, 16 did you ever go to the commissioners and pound the 17 table and ask more money for the jail? 18 A. Yes. Every budget session. 19 Q. All right. And when would the first one 20 have been? 21 A. Oh. 22 Q. You know -- well, let's not do it that 23 way. Tell me without regard to -- to specifics, 24 but I am curious about that. You come on as 25 sheriff to June 4, 2020, what do you remember</p>

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<p style="text-align: right;">36</p> <p>1 communicating to the commissioners about the need</p> <p>2 for more money for the jail specifically?</p> <p>3 A. I think my push since I've been sheriff</p> <p>4 was for additional staff, whether that was deputies</p> <p>5 or correction officers. I -- so I'm a little</p> <p>6 confused on your question, but --</p> <p>7 Q. Mm-hmm.</p> <p>8 A. -- I -- I've been doing that since I've</p> <p>9 taken office. But I know we do our budgets in June</p> <p>10 or July, so it would have been in our budget</p> <p>11 proposal as well, but then the commissioners are in</p> <p>12 control of that, so --</p> <p>13 Q. Yeah. And what was -- what do you recall</p> <p>14 in terms of commissioner response? Did you have</p> <p>15 some success?</p> <p>16 A. No. Not for my first two or three years.</p> <p>17 So my first year or two was no a lot. If I recall</p> <p>18 specifically, it was -- one of our commissioners</p> <p>19 stated, "The roads are our number one priority, not</p> <p>20 the sheriff's office." I believe that was the</p> <p>21 exact words.</p> <p>22 Q. And which commissioner said that?</p> <p>23 A. That would have been Henry LaRocque.</p> <p>24 Q. And from when you came on as sheriff</p> <p>25 through Lacey's death, do you recall ever going to</p>	<p style="text-align: right;">38</p> <p>1 A. I don't think I approached it exactly</p> <p>2 in -- in that way. I asked for additional</p> <p>3 funding -- excuse me -- and -- and additional</p> <p>4 staff -- for additional staff. But directed right</p> <p>5 at that, no.</p> <p>6 To -- to kind of go a little further on</p> <p>7 that, it -- when DOCR comes and does an inspection</p> <p>8 and out of 108 standards they find you noncompliant</p> <p>9 for 4, you have time to fix those observations.</p> <p>10 And Standard 32 in particular, it talks about</p> <p>11 15-minute checks in the observations, and then</p> <p>12 it -- it says on an irregular basis. So if you're</p> <p>13 doing 15-minute checks and you're on 15 minutes</p> <p>14 every time, DOCR finds you noncompliant because you</p> <p>15 have to mix them up.</p> <p>16 So depending on -- it -- some of the</p> <p>17 workers we've got to do 15-minute checks, we've got</p> <p>18 to do 15-minute checks, and they were doing</p> <p>19 15-minute checks but they were found noncompliant</p> <p>20 because they were doing it right on the dot. So</p> <p>21 that's an easy fix where they came back and would</p> <p>22 watch at 12 minutes instead of the 15 and then</p> <p>23 after that. So when they find you in</p> <p>24 noncompliance, it's -- sometimes it's a -- it's an</p> <p>25 easy fix or a change in your policy.</p>
<p style="text-align: right;">37</p> <p>1 any commissioner and explaining that the jail's</p> <p>2 last inspection identified an issue and I need more</p> <p>3 people in the jail to fix that issue?</p> <p>4 A. If I understand your question, the -- when</p> <p>5 we -- when Lance Anderson had everybody at my</p> <p>6 office, he expressed that as well, so it came from</p> <p>7 both of us, myself and Lance Anderson. I don't</p> <p>8 remember Mr. Werlinger being there that time. I</p> <p>9 believe it was just Lance. But in any event, I</p> <p>10 remember Lance stating that and myself as well.</p> <p>11 Q. And was --</p> <p>12 A. And that was a strong recommendation from</p> <p>13 the DOCR.</p> <p>14 Q. And was that before Lacey or after?</p> <p>15 A. This is after we watched the video.</p> <p>16 Q. All right. And if we -- if we think back</p> <p>17 to Exhibit 81 -- I don't necessarily need you to</p> <p>18 look at it unless you want to -- what I'm curious</p> <p>19 about is before Lacey on this question. All right?</p> <p>20 Before June 3 of 2020 --</p> <p>21 A. Okay.</p> <p>22 Q. -- did you ever go to any commissioner and</p> <p>23 say the DOCR has identified that we're deficient in</p> <p>24 the area of inmate observation and I need more --</p> <p>25 more COs, more jail staff to meet that standard?</p>	<p style="text-align: right;">39</p> <p>1 Q. Okay. And did you ever change the inmate</p> <p>2 observation policy from the time you became sheriff</p> <p>3 through Lacey's death?</p> <p>4 A. Uff. I'm -- we've changed the policy</p> <p>5 probably every year, so I would have to line them</p> <p>6 all up and compare them to answer that a hundred</p> <p>7 percent, but in a vague, we've changed it --</p> <p>8 Q. And --</p> <p>9 A. -- quite --</p> <p>10 Q. And as --</p> <p>11 A. -- a bit.</p> <p>12 Q. -- as the sheriff, you want to comply with</p> <p>13 Standard 32, I assume; correct?</p> <p>14 A. I want to comply with all 108 standards.</p> <p>15 Q. Yeah. And -- and the -- would you agree</p> <p>16 that Standard 32 is a life safety standard?</p> <p>17 A. Yeah. I think all of them could be life</p> <p>18 saving. They're -- they're standards the DOCR put</p> <p>19 in place, so yes.</p> <p>20 Q. And sometimes like if -- if you're used to</p> <p>21 going to the commissioners and asking for more</p> <p>22 funding, I'm wondering if -- did you ever think</p> <p>23 about maybe if I tell the commissioners and I -- I</p> <p>24 hold up a 2018 inspection or a 2019 inspection and</p> <p>25 say, look, we've had a problem identified here, we</p>

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<p style="text-align: right;">40</p> <p>1 need more people to fix it, did you ever think</p> <p>2 about doing that?</p> <p>3 A. On the 2018 one, but I wasn't sheriff at</p> <p>4 that time, but the -- the 2019 one, I've never</p> <p>5 taken one of these closeouts after they're done</p> <p>6 inspecting us and brought it to the commissioners</p> <p>7 and said specifically we were on -- for</p> <p>8 noncompliance I need this many more workers. I</p> <p>9 didn't say it like that, no.</p> <p>10 Q. Well, and the time to fix Exhibit 81, the</p> <p>11 December 2018 inspection, is 2019; correct?</p> <p>12 A. I'm sorry. What did you say?</p> <p>13 Q. The time to fix any problems identified on</p> <p>14 the December 4 --</p> <p>15 A. Oh.</p> <p>16 Q. -- 2018, inspection is 2019.</p> <p>17 A. Not necessarily. She could have -- I -- I</p> <p>18 wasn't there in 2018. They could have had these</p> <p>19 fixed before January 1 of '19. I don't -- I don't</p> <p>20 recall. I wasn't jail administrator at that time.</p> <p>21 Q. Do you know what type of correctional</p> <p>22 experience Kim Nadeau had?</p> <p>23 A. Yeah. She's had correctional experience.</p> <p>24 She's been the office deputy for more years than I</p> <p>25 can recall off the top of my head. I -- if I said</p>	<p style="text-align: right;">42</p> <p>1 thinking about the first one. Sorry.</p> <p>2 Q. Yeah. Sorry. Do you understand that the</p> <p>3 DOCR said that the jail did some things wrong with</p> <p>4 regard to how it handled Lacey?</p> <p>5 A. Their -- that's what their report reads,</p> <p>6 that there was a couple noncompliance. Correct.</p> <p>7 Q. Okay. Do you place any of that on Kim</p> <p>8 Nadeau and her title as being jail administrator?</p> <p>9 A. And I -- I apologize it took me so long to</p> <p>10 answer that one, but no. I -- I'm the sheriff.</p> <p>11 Q. Do -- did you -- do you blame drugs for</p> <p>12 what happened with Lacey?</p> <p>13 A. We have a huge drug problem in our area</p> <p>14 and it's not uncommon to have people come in that</p> <p>15 may -- may be under the influence, so I -- I would</p> <p>16 definitely say that -- that drugs played a role in</p> <p>17 this too. I'm not -- I'm not real good at blaming</p> <p>18 others.</p> <p>19 Q. Okay. Well, as sheriff sometimes you have</p> <p>20 to figure out what, if anything, went wrong,</p> <p>21 though; right? When somebody -- either there's an</p> <p>22 officer-involved shooting, did we -- did we follow</p> <p>23 the use-of-force rules or not? In-custody death,</p> <p>24 did we follow the standards or not? That's part of</p> <p>25 your responsibility as sheriff; correct?</p>
<p style="text-align: right;">41</p> <p>1 16, I might be shooting it short. If I said 30, I</p> <p>2 might be going too long. She -- she's been at the</p> <p>3 facility for -- for a while.</p> <p>4 Q. How about writing policies for a jail? Do</p> <p>5 you know if she has any experience in that area?</p> <p>6 Writing policies that'll comply with the North</p> <p>7 Dakota Century Code and the constitution.</p> <p>8 A. Yes. When I took office in 2019, she was</p> <p>9 in charge of the policies.</p> <p>10 Q. Got it.</p> <p>11 Do you place any blame on Kim Nadeau in</p> <p>12 terms of her role as jail administrator in the</p> <p>13 Lacey Higdeman death?</p> <p>14 A. Sorry?</p> <p>15 Q. First of all, was Kim Nadeau the jail</p> <p>16 administrator on June 4 of 2020?</p> <p>17 A. I -- say that one more time.</p> <p>18 Q. Yeah.</p> <p>19 A. I apologize.</p> <p>20 Q. Yeah. I mean, the -- clearly the DOCR</p> <p>21 thought that the Rolette County Jail did some</p> <p>22 things wrong with regard to Lacey; fair?</p> <p>23 A. What question would you like me to answer?</p> <p>24 Q. That one.</p> <p>25 A. You've asked two. Sorry. Now I was</p>	<p style="text-align: right;">43</p> <p>1 A. I don't believe so. And the reason I say</p> <p>2 I don't believe so is because I don't want my</p> <p>3 county to investigate my county so there's no</p> <p>4 discrepancies. So the inmate death would be BCI.</p> <p>5 An officer-involved shooting would be BCI. So in</p> <p>6 2017 when I was involved in an officer shooting, it</p> <p>7 was BCI that handled that.</p> <p>8 Q. But don't you as the county sheriff have</p> <p>9 the ability to review the conduct of your deputies</p> <p>10 and correctional officers to see if it complied</p> <p>11 with your own policies?</p> <p>12 A. To review, yes. You said to investigate</p> <p>13 first.</p> <p>14 Q. Okay. All right. Have you ever -- in</p> <p>15 terms of your tenure at Rolette County sheriff,</p> <p>16 have you ever done -- reviewed a use of force</p> <p>17 incident to see if a deputy complied with your</p> <p>18 policy?</p> <p>19 A. I reviewed the officer-involved shooting</p> <p>20 that happened on tribal land, and I don't remember</p> <p>21 the exact date or year, but that again was not my</p> <p>22 investigation. It was -- I reviewed BCI and FBI's</p> <p>23 reports of the shooting.</p> <p>24 Q. Okay.</p> <p>25 A. So I guess I -- I don't recall</p>

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<p style="text-align: right;">44</p> <p>1 specifically what you're asking.</p> <p>2 Q. All right. So with -- let's take Lacey</p> <p>3 specifically. Excuse me. You understood that the</p> <p>4 BCI was doing a criminal investigation and the DOCR</p> <p>5 was doing an investigation to see whether or not</p> <p>6 the jail complied with the standards; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And the outcome of the criminal</p> <p>9 investigation was two criminal convictions for two</p> <p>10 of your correctional officers; correct?</p> <p>11 A. I'd have to --</p> <p>12 MR. GRANT BAKKE: Object to form.</p> <p>13 THE WITNESS: -- read the report. I don't</p> <p>14 recall.</p> <p>15 Q. (MR. NOEL CONTINUING) You don't know if</p> <p>16 Myles and April were convicted of crimes?</p> <p>17 A. I don't recall.</p> <p>18 MR. GRANT BAKKE: Object to form.</p> <p>19 Q. (MR. NOEL CONTINUING) Okay. Well, I</p> <p>20 guess we can -- let's see.</p> <p>21 A. Did it say Sheriff Gustafson charged them</p> <p>22 out?</p> <p>23 Q. Well, no.</p> <p>24 A. Okay. Sorry.</p> <p>25 Q. Take a look at Exhibit 49.</p>	<p style="text-align: right;">46</p> <p>1 perform duty in connection with the Lacey Higdem</p> <p>2 incident before today?</p> <p>3 A. I don't recall on either one, Myles or</p> <p>4 April, that they did an Alford plea or -- on that.</p> <p>5 I don't recall.</p> <p>6 Q. And did you know between the Higdem death</p> <p>7 and, you know -- and their pleas -- that's --</p> <p>8 that's a few years -- did you know that there was</p> <p>9 pending criminal investigation involving Myles and</p> <p>10 April or not?</p> <p>11 A. I know Zachmeier was doing an</p> <p>12 investigation.</p> <p>13 Q. Okay.</p> <p>14 A. I -- I didn't pry into his investigation.</p> <p>15 Q. All right. And you don't have any quarrel</p> <p>16 with the fact that these two have a -- currently</p> <p>17 have a conviction on their record for this?</p> <p>18 A. Reading the documents.</p> <p>19 Q. All right. Do you as -- as the sheriff</p> <p>20 and the ultimate authority at the Rolette County</p> <p>21 Jail, from your review of the Higdem incident, do</p> <p>22 you believe that Myles did anything wrong?</p> <p>23 A. I -- so that night I was not there, but</p> <p>24 reviewing the -- the investigations from DOCR and</p> <p>25 BCI, I would -- a person could agree with it. Yes.</p>
<p style="text-align: right;">45</p> <p>1 A. 49, you said?</p> <p>2 Q. Yeah. So Exhibit 49 is a Petition to</p> <p>3 Enter -- there's a typo in there -- Alford Plea of</p> <p>4 Guilty and Waiver of Appearance by Myles Brunelle.</p> <p>5 Do you see that title page?</p> <p>6 A. Yes.</p> <p>7 Q. All right. And we're not going to go</p> <p>8 through this whole document, but I can represent to</p> <p>9 you that Myles Brunelle on May 31 of 2023 pled</p> <p>10 guilty -- rendered an Alford plea of guilty to</p> <p>11 public servant for re -- refusing to perform duty</p> <p>12 in violation of Section 12.1-11-66 of North Dakota</p> <p>13 Century Code, a Class A misdemeanor. Did you</p> <p>14 previously -- did you know that he pled guilty to a</p> <p>15 crime before today?</p> <p>16 A. I don't recall.</p> <p>17 MR. GRANT BAKKE: Object to form.</p> <p>18 Q. (MR. NOEL CONTINUING) And then</p> <p>19 Exhibit 57, which you can certainly grab if you</p> <p>20 want, it's the same with regard to April.</p> <p>21 A. Which one? Sorry.</p> <p>22 Q. 57.</p> <p>23 A. 57. Okay.</p> <p>24 Q. Did you know that April made an Alford</p> <p>25 plea of guilty for public servant refusing to</p>	<p style="text-align: right;">47</p> <p>1 Q. Okay. What specifically would you --</p> <p>2 would you identify with regard to Myles?</p> <p>3 A. Oh, jeez. I'd have to read their reports</p> <p>4 again, the BCI and the D -- DOCR's reports to see</p> <p>5 where they found issues or concerns.</p> <p>6 Q. Okay.</p> <p>7 A. Only to the fact that I wasn't there that</p> <p>8 evening. I don't know what he was seeing or doing.</p> <p>9 Q. All right. So if the -- if the BCI or the</p> <p>10 DOCR concluded that Myles did certain things wrong,</p> <p>11 would you have a quarrel with that? And we can</p> <p>12 certainly go through the reports that you're --</p> <p>13 that you're referencing if you feel more</p> <p>14 comfortable with that.</p> <p>15 A. I would because I wasn't there that night</p> <p>16 so I don't -- or with them during their</p> <p>17 investigations.</p> <p>18 Q. Okay.</p> <p>19 A. So it's hard to say I agree or don't</p> <p>20 agree.</p> <p>21 Q. All right. All right. So if you look at</p> <p>22 Exhibit 3. This is the probable cause affidavit</p> <p>23 from Craig Zachmeier with the BCI. Have you ever</p> <p>24 seen this before? It's pretty long.</p> <p>25 A. I don't know if I -- I'd have to go</p>

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<p style="text-align: right;">48</p> <p>1 through --</p> <p>2 Q. Yeah.</p> <p>3 A. -- the whole thing and then compare it to</p> <p>4 something I had at my office that I don't have in</p> <p>5 front of me.</p> <p>6 Q. Okay.</p> <p>7 A. So I don't know if I've seen this exact</p> <p>8 thing, but I did get a copy of Zachmeier's report</p> <p>9 which starting out looks pretty similar.</p> <p>10 Q. Yeah. And -- and the -- the report is</p> <p>11 pretty similar to the probable cause affidavit.</p> <p>12 It's probably not identical, but I -- I understand</p> <p>13 what you're saying.</p> <p>14 But go to -- of Exhibit 3, go to page 14</p> <p>15 and there's a paragraph 5.</p> <p>16 A. I'm sorry, you said --</p> <p>17 Q. Yep, page four --</p> <p>18 A. -- number 5.</p> <p>19 Q. Yeah, page --</p> <p>20 A. Okay.</p> <p>21 Q. -- 14, paragraph 5. This is where it</p> <p>22 starts talking about the North Dakota Century Code,</p> <p>23 and he's got some things bolded in here including,</p> <p>24 "Inmates shall be supervised on a twenty-four-hour</p> <p>25 basis by trained correctional staff. Correctional</p>	<p style="text-align: right;">50</p> <p>1 with April?</p> <p>2 A. Correct.</p> <p>3 Q. All right. You can put that one down.</p> <p>4 When do you remember learning about the</p> <p>5 cause of Lacey's death?</p> <p>6 A. Just so I understand that, can you repeat</p> <p>7 that?</p> <p>8 Q. Yeah. Do you remember learning about her</p> <p>9 cause of death?</p> <p>10 A. I -- I'm going to have to kind of go in</p> <p>11 order just to answer that. Sorry.</p> <p>12 Q. Mm-hmm.</p> <p>13 A. I believe I got a call at 12:20 from</p> <p>14 Correction Officer Brunelle.</p> <p>15 Q. Correct.</p> <p>16 A. I believe that was the time. That we had</p> <p>17 ambulance on the way for one that was unresponsive.</p> <p>18 The cause of death, I wouldn't have known that till</p> <p>19 a later date or later time. Sorry.</p> <p>20 Q. Do you know how you -- how you were</p> <p>21 informed of the cause of death?</p> <p>22 A. I don't recall.</p> <p>23 Q. Okay. Do you know by whom?</p> <p>24 A. My initial is Agent Zachmeier.</p> <p>25 Q. All right. Did you ever sit down with</p>
<p style="text-align: right;">49</p> <p>1 facility staff shall be located in proximity to</p> <p>2 inmate living areas to permit the staff to hear and</p> <p>3 respond promptly to calls for help." And, "Each</p> <p>4 correctional facility shall provide for the</p> <p>5 personal observation of inmates on an irregular but</p> <p>6 frequent schedule."</p> <p>7 Did I read those three bolded items</p> <p>8 correctly?</p> <p>9 A. Correct.</p> <p>10 Q. Do you know -- do you -- do you know</p> <p>11 whether or not Myles failed in any of those areas?</p> <p>12 A. I do not recall, but I -- I know it's in</p> <p>13 the reports of DOCR and BCI.</p> <p>14 Q. All right. And would you quarrel with</p> <p>15 their conclusions in that regard?</p> <p>16 MR. GRANT BAKKE: Object to form.</p> <p>17 THE WITNESS: I believe from Myles'</p> <p>18 standpoint, he felt he was performing his duties as</p> <p>19 a correction officer, and I believe in DOCR's</p> <p>20 reports and BCI's, they -- they disagreed.</p> <p>21 Q. (MR. NOEL CONTINUING) Okay. And do you</p> <p>22 have an opinion one way or another on who's right?</p> <p>23 A. I don't have an opinion one way or the</p> <p>24 other.</p> <p>25 Q. All right. And would the same be true</p>	<p style="text-align: right;">51</p> <p>1 Myles and talk to him about his shift that night,</p> <p>2 June 3, June 4, 2020?</p> <p>3 A. Did I sit down with Myles and --</p> <p>4 Q. Yeah. And you know what I mean by "sit</p> <p>5 down."</p> <p>6 A. Yeah.</p> <p>7 Q. Did you ever talk to Myles about his shift</p> <p>8 June 3 and 4, 2020?</p> <p>9 A. I don't believe we ever did a debrief.</p> <p>10 The reason for that was there was two separate</p> <p>11 investigations going on. I didn't want to do</p> <p>12 anything to -- when those guys were doing their</p> <p>13 investigations, and when I say "they," DOCR and</p> <p>14 BCI.</p> <p>15 Q. Okay.</p> <p>16 A. So I believe they would have talked to</p> <p>17 them, but myself, I do not recall sitting down with</p> <p>18 either one, Myles or April --</p> <p>19 Q. All right.</p> <p>20 A. -- and visiting with them, just to get</p> <p>21 your next question out of the way.</p> <p>22 Q. There you go. And they were -- they were</p> <p>23 done working at the Rolette County Jail by -- by</p> <p>24 the beginning of July of 2020?</p> <p>25 A. Sorry. I don't --</p>

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<p style="text-align: right;">52</p> <p>1 Q. That's okay.</p> <p>2 A. I'd have --</p> <p>3 Q. Yeah. We'll pull --</p> <p>4 A. -- to see the document.</p> <p>5 Q. Yeah. We've got them.</p> <p>6 Let's go through these a little bit. It's</p> <p>7 Exhibit 20 and 21. So Exhibit 20 is a two-page</p> <p>8 document, April Azure signed by you. She's no</p> <p>9 longer employed as of July 1 -- or as of June 30,</p> <p>10 2020, and her resignation letter is attached for</p> <p>11 HR; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And then if you go to the second page, it</p> <p>14 has April's signature after a brief statement. And</p> <p>15 do you know who -- who wrote out or typed out this</p> <p>16 statement on the second page of Exhibit 20?</p> <p>17 A. I do not recall.</p> <p>18 Q. Did you do it?</p> <p>19 A. No.</p> <p>20 Q. Okay. So between Lacey's death and July 1</p> <p>21 of 2020, you didn't have a conversation with April</p> <p>22 about what happened on that shift?</p> <p>23 A. April nor Myles.</p> <p>24 Q. All right. And then with regard to</p> <p>25 Exhibit 21 --</p>	<p style="text-align: right;">54</p> <p>1 Q. And --</p> <p>2 A. I -- I saw one.</p> <p>3 Q. All right.</p> <p>4 A. I don't know.</p> <p>5 Q. And the video -- I mean April talked about</p> <p>6 it. She said it was inappropriate touching,</p> <p>7 physical contact on the job. Fair assessment?</p> <p>8 A. Fair assessment, yes.</p> <p>9 Q. Okay. And the -- the reason that you</p> <p>10 communicated to April and Myles about the need to</p> <p>11 resign -- first of all, did you communicate to them</p> <p>12 that you either need to resign or you will be</p> <p>13 terminated?</p> <p>14 A. I don't recall how that went. I just</p> <p>15 remember them signing their resignation.</p> <p>16 Q. All right. And -- and did you have some</p> <p>17 type of requirement that they resign?</p> <p>18 A. I'm sorry?</p> <p>19 Q. Did you make them resign?</p> <p>20 A. I don't recall making them resign.</p> <p>21 Q. So you brought the -- the inappropriate</p> <p>22 touching to their attention; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And you said I've got video of it; right?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">53</p> <p>1 A. Oh, sorry.</p> <p>2 Q. -- that's Myles' resignation, it's got the</p> <p>3 same date, and it's got a -- another statement on</p> <p>4 the second page above the signature. You did not</p> <p>5 type out that statement either?</p> <p>6 A. No. I don't recall. No. I don't recall</p> <p>7 typing it out.</p> <p>8 Q. What do you -- what do you -- what led</p> <p>9 to -- tell me about the -- their resignation. Did</p> <p>10 you call a meeting? What -- what happened in</p> <p>11 relation to all that?</p> <p>12 A. Preparing video evidence for BCI and DOCR,</p> <p>13 we found some -- some other videos involving the</p> <p>14 two of them which was enough for me to have a</p> <p>15 meeting with the two of them. I was by telephone.</p> <p>16 I believe my -- I don't recall if he was my chief</p> <p>17 deputy at the time or my sergeant, Mitch Slater,</p> <p>18 and I was on the road on the phone. And I had a</p> <p>19 phone meeting with Myles and April about the video</p> <p>20 with the two of them in it, and that's what led to</p> <p>21 the -- to them resigning.</p> <p>22 Q. All right. And then the video that you're</p> <p>23 referencing, was it one video?</p> <p>24 A. I don't recall. I -- I thought it was</p> <p>25 one.</p>	<p style="text-align: right;">55</p> <p>1 Q. And video doesn't lie. Now you have</p> <p>2 objective evidence that these two were engaged in</p> <p>3 inappropriate behavior on the job; true?</p> <p>4 A. Your -- is it your stomach that's making</p> <p>5 all that noise?</p> <p>6 Q. It is. Yeah.</p> <p>7 A. It's -- it's distracting me. Sorry.</p> <p>8 Q. I do that on purpose.</p> <p>9 A. Can you repeat that one? Sorry.</p> <p>10 Q. Yeah. You -- now you have objective video</p> <p>11 evidence that they have engaged in inappropriate</p> <p>12 touching on the job --</p> <p>13 A. Okay.</p> <p>14 Q. -- correct?</p> <p>15 A. Correct.</p> <p>16 Q. And when you called them, was it your</p> <p>17 intent for them not to work for you at the Rolette</p> <p>18 County Jail any longer?</p> <p>19 A. I think that was -- that's fair to say.</p> <p>20 Yeah.</p> <p>21 Q. All right. And the -- the -- and April</p> <p>22 recalled that the -- you made a specific point to</p> <p>23 tell her that she was being fired -- or she was</p> <p>24 being asked to resign, rather, because of the</p> <p>25 touching and it didn't have anything to do with the</p>

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<p style="text-align: right;">56</p> <p>1 Lacey Higdem incident. Is she correct about that?</p> <p>2 A. I -- I don't recall.</p> <p>3 Q. But the reason that -- that you didn't</p> <p>4 want them to work for you anymore was because of</p> <p>5 this inappropriate touching on the job; correct?</p> <p>6 A. When I -- when I was aware of that, yeah,</p> <p>7 that's enough to not have somebody at the facility.</p> <p>8 Q. All right. Was there any reason -- any</p> <p>9 other reason other than the inappropriate touching</p> <p>10 that you didn't want them working at your facility?</p> <p>11 A. I didn't -- at that time I didn't take</p> <p>12 any -- because the ve -- investigation was not</p> <p>13 complete with DOCR or BCI. So I can't say I took</p> <p>14 any of that into factor.</p> <p>15 Q. Okay.</p> <p>16 A. The video was -- that's enough to -- to do</p> <p>17 that.</p> <p>18 Q. All right. Did you have any type of gut</p> <p>19 feeling by the time July 1 rolled around that April</p> <p>20 may have performed her duties improperly that day</p> <p>21 with Lacey or not?</p> <p>22 A. Did I have a gut feeling?</p> <p>23 Q. Yeah.</p> <p>24 A. On what -- on what date? Sorry.</p> <p>25 Q. When they resigned.</p>	<p style="text-align: right;">58</p> <p>1 A. Okay.</p> <p>2 Q. -- and then you watched in another time,</p> <p>3 less of the video, with more people around; do</p> <p>4 you --</p> <p>5 A. Commissioner --</p> <p>6 Q. -- remember that?</p> <p>7 A. -- and the auditor, correct.</p> <p>8 Q. And that was -- those viewings were before</p> <p>9 their resignations were handed out; correct?</p> <p>10 A. The very first one, yes. The second one,</p> <p>11 I am un -- I don't -- I couldn't answer that one.</p> <p>12 I don't know.</p> <p>13 Q. All right. All right. Take a look, if</p> <p>14 you would, Sheriff Gustafson, at Exhibit 83. Some</p> <p>15 of these are easier to find than others. This</p> <p>16 one's only two pages. There it is.</p> <p>17 All right. Exhibit 83 is a memo to Brian</p> <p>18 Grosinger, Lance Anderson, Robert Werlinger from</p> <p>19 you dated June 23, 2020, and it's titled Mortality</p> <p>20 Review of Lacey Higdem; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And did you complete this pursuant to some</p> <p>23 jail policy?</p> <p>24 A. Yeah, I believe we were required to do a</p> <p>25 mortality review.</p>
<p style="text-align: right;">57</p> <p>1 A. Okay.</p> <p>2 Q. Did you have a feeling that, you know --</p> <p>3 and I'm not saying you communicated it to them, but</p> <p>4 did you have some concerns that April may have not</p> <p>5 performed her duties correctly on that June 3,</p> <p>6 June 4, 2020, shift or not?</p> <p>7 A. As sheriff -- as the sheriff of Rolette</p> <p>8 County, I have concerns daily. I had a person pass</p> <p>9 away in the jail while -- while I was sheriff. Of</p> <p>10 course there's concerns.</p> <p>11 Q. Okay. But nothing had been solidified in</p> <p>12 your mind in terms of, you know, whether they had</p> <p>13 performed up to snuff or not by the time July 1</p> <p>14 rolled around; is that fair?</p> <p>15 A. Not -- yeah, I would think that's fair.</p> <p>16 Q. And by the time their resignation rolled</p> <p>17 around, you had already watched the video the</p> <p>18 couple times that we talked about; is that true?</p> <p>19 A. We've talked about a couple videos, so</p> <p>20 which video and --</p> <p>21 Q. Yes. So by the -- you -- you talked about</p> <p>22 watching it once, the booking, and then you watched</p> <p>23 the cell in --</p> <p>24 A. Oh, okay.</p> <p>25 Q. -- fast-forward --</p>	<p style="text-align: right;">59</p> <p>1 Q. All right. Was there a -- did you convene</p> <p>2 a mortality review committee?</p> <p>3 A. I believe so, yeah.</p> <p>4 Q. And are those folks identified in the</p> <p>5 first paragraph as yourself, Kim Nadeau, Amber</p> <p>6 Davis, Mitch Slater and Nurse Lori Sollin?</p> <p>7 A. Correct.</p> <p>8 Q. What's your understanding of the purpose</p> <p>9 of the mortality review as you sent it over to</p> <p>10 these folks June 23, 2020?</p> <p>11 A. Well, it's to give the overview and a</p> <p>12 summary of what we've done. The -- it gives the</p> <p>13 timeline.</p> <p>14 Q. And we will -- we will look at the policy</p> <p>15 a little bit -- a little bit later. So I just want</p> <p>16 to ask you a couple questions about this document</p> <p>17 for the time being.</p> <p>18 By the time you wrote Exhibit 83, had you</p> <p>19 watched the -- the booking video and the cell</p> <p>20 video?</p> <p>21 A. I believe we had, yeah.</p> <p>22 Q. All right. And with regard to the second</p> <p>23 page of Exhibit 83, which is stamped DOCR-001016,</p> <p>24 we have a timeline of events; do you see that?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">60</p> <p>1 Q. And what was your goal in completing the</p> <p>2 timeline of events?</p> <p>3 A. Just to give the timeline of the events as</p> <p>4 they took place.</p> <p>5 Q. All right. And if we look, we have 1538</p> <p>6 booking in Lacey Higdem. How were you able to</p> <p>7 determine that that's what time she was booked in?</p> <p>8 You know, if it was video or reports or both?</p> <p>9 A. I don't recall.</p> <p>10 Q. The -- the jail -- the cell surveillance</p> <p>11 video that we've been given doesn't have a time of</p> <p>12 day on it, and what I'm curious about is if you</p> <p>13 will -- I'll fix that during the break.</p> <p>14 A. Sorry.</p> <p>15 Q. That's okay.</p> <p>16 If you as the sheriff go and pull video --</p> <p>17 let's say you want to look at something from a</p> <p>18 couple weeks ago and you pull the video from</p> <p>19 cell -- from Unit B-201, will the date and time</p> <p>20 stamp be on that so you can tell when -- when it</p> <p>21 is?</p> <p>22 A. I don't recall. I -- my first answer is</p> <p>23 no, but I've watched other videos that have it and</p> <p>24 some that don't -- and not videos, but cameras,</p> <p>25 like my other -- my mother owns a business and I</p>	<p style="text-align: right;">62</p> <p>1 bullets on a timeline here. You've got a bunch,</p> <p>2 but the two we're talking about is 1553 --</p> <p>3 A. 1553.</p> <p>4 Q. -- she's put in B pod.</p> <p>5 A. Correct.</p> <p>6 Q. Next one is 0023, Brunelle finds her not</p> <p>7 breathing. And what I'm curious about is from your</p> <p>8 review of the video from that cell, did you find</p> <p>9 anything noteworthy between those two bullets?</p> <p>10 A. I don't recall. I didn't watch the video</p> <p>11 a whole bunch of times. I believe there was</p> <p>12 other -- Dixie and Brock were working, Wesley Kom</p> <p>13 that day too. So I don't know why we didn't put</p> <p>14 that they had checked on her or if they did. I</p> <p>15 don't -- I don't recall. It's been a while since I</p> <p>16 watched that video.</p> <p>17 Q. All right. When you watched that video</p> <p>18 for the purpose of creating the mortality review,</p> <p>19 were you trying to provide these gentlemen with</p> <p>20 information that would lead them to believe that</p> <p>21 you complied with standards?</p> <p>22 MR. GRANT BAKKE: Object to form.</p> <p>23 THE WITNESS: I believe we were just</p> <p>24 filling out what was asked and required of us.</p> <p>25 Q. (MR. NOEL CONTINUING) Okay. And then</p>
<p style="text-align: right;">61</p> <p>1 review cameras for her. That has date and time on</p> <p>2 it. I don't do the recordings so I don't remember</p> <p>3 if that -- when we're watching it on our screen in</p> <p>4 the control room, it does not have date and time on</p> <p>5 that.</p> <p>6 Q. All right. And the vid -- yeah, okay.</p> <p>7 That's -- that helps. So if we look at the</p> <p>8 timeline, we have, 1553 Higdem placed in B pod</p> <p>9 lockdown upstairs, and then there's a gap from --</p> <p>10 to 0023 which is 12:23 a.m., CO Brunelle</p> <p>11 conducting -- conducting cell check and noticed</p> <p>12 Higdem was not breathing. Those -- those two are</p> <p>13 consecutive on your timeline; correct?</p> <p>14 A. From 1553 to 0023?</p> <p>15 Q. Yeah.</p> <p>16 A. Correct.</p> <p>17 Q. And from your review of the video, did you</p> <p>18 find anything noteworthy in the time between the</p> <p>19 placement in B pod and the time Brunelle found</p> <p>20 Higdem not breathing?</p> <p>21 A. I apologize, I keep asking you to repeat</p> <p>22 yourself.</p> <p>23 Q. That's okay.</p> <p>24 A. I'm kind of hard of hearing, but --</p> <p>25 Q. Yeah. So the question is you have two</p>	<p style="text-align: right;">63</p> <p>1 on -- on the bottom of page 2, were you trying</p> <p>2 to -- forget that.</p> <p>3 Bottom of page 2 --</p> <p>4 A. Okay.</p> <p>5 Q. -- the last dark-colored bullet point</p> <p>6 there says, "Security observations and</p> <p>7 recommendations," and it says, "Upon review of all</p> <p>8 available resources, we find that Rolette County</p> <p>9 Correctional Officers did in 'good faith' attempt</p> <p>10 to resuscitate Inmate Higdem in an attempt to save</p> <p>11 her life."</p> <p>12 Did I read that correctly?</p> <p>13 A. Correct.</p> <p>14 Q. And then it goes -- the next sentence</p> <p>15 says, "Some recommendations follow." And what --</p> <p>16 what I'd like you to do is just read those</p> <p>17 recommendations to yourself and then we'll talk</p> <p>18 about these bullet points a little bit. And you</p> <p>19 just tell me when you're ready.</p> <p>20 A. Okay.</p> <p>21 Q. What led you to conclude that correctional</p> <p>22 officers in good faith attempted to resuscitate</p> <p>23 Inmate Higdem?</p> <p>24 A. What led me to believe that they were</p> <p>25 acting in good faith?</p>

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<p style="text-align: right;">64</p> <p>1 Q. Yeah.</p> <p>2 A. They performed CPR.</p> <p>3 Q. Okay. And I'm going to single out Myles</p> <p>4 here.</p> <p>5 A. Okay.</p> <p>6 Q. Do you think Myles acted in good faith in</p> <p>7 trying to resuscitate Inmate Higdem? He's the one</p> <p>8 that found her not breathing.</p> <p>9 A. Do I feel he acted in good faith?</p> <p>10 Q. Yeah.</p> <p>11 A. Do I feel Myles Brunelle acted in good</p> <p>12 faith on this?</p> <p>13 Q. These are your words, "good faith," not</p> <p>14 mine, so that's why I'm asking you.</p> <p>15 A. I feel he acted in good faith, yes.</p> <p>16 Q. Okay.</p> <p>17 A. He --</p> <p>18 Q. Because why? What'd you see from him that</p> <p>19 led you to conclude that?</p> <p>20 A. And I'm -- I haven't watched that video in</p> <p>21 a while, but if I recall right, he checked for a</p> <p>22 pulse. I will say he froze in that scenario, which</p> <p>23 is different from our training. And in that aspect</p> <p>24 where I think he did good faith was he went to go</p> <p>25 get help.</p>	<p style="text-align: right;">66</p> <p>1 A. No.</p> <p>2 Q. Would that have been -- that -- fair to</p> <p>3 say that's a failure?</p> <p>4 MR. GRANT BAKKE: Object to form.</p> <p>5 Q. (MR. NOEL CONTINUING) A trained CO comes</p> <p>6 upon someone not breathing. Idea is your training</p> <p>7 kicks in, I'm going to immediately begin lifesaving</p> <p>8 efforts. He leaves. As a result, she's laying</p> <p>9 there with nobody tending to her for over two and a</p> <p>10 half minutes. Is that a failure on his part?</p> <p>11 MR. GRANT BAKKE: Same objection.</p> <p>12 THE WITNESS: I guess to answer that one,</p> <p>13 I'm -- it's tough to answer for -- on his behalf,</p> <p>14 but I will say this: I've been in this line of</p> <p>15 work since '07? Have you ever had a dead baby in</p> <p>16 your arms and you're trying to give it CPR?</p> <p>17 Q. (MR. NOEL CONTINUING) I have not.</p> <p>18 A. And we're trained to do that. That's very</p> <p>19 tough. Same thing with a car accident when there's</p> <p>20 a piece of them over there and a piece over there.</p> <p>21 Q. Yep.</p> <p>22 A. It's -- you can train all day, every day,</p> <p>23 but until it comes, that's when you know whether</p> <p>24 you can do it or not.</p> <p>25 Q. I'm not asking you to take him out back</p>
<p style="text-align: right;">65</p> <p>1 Q. Do you know if he was the shift supervisor</p> <p>2 that day?</p> <p>3 A. At -- at this time I believe the way we</p> <p>4 were -- the -- the way we were doing it at this</p> <p>5 time, I think the one with the most experience was</p> <p>6 the sift -- shift supervisor, in this case which</p> <p>7 would have been Troll. And I hate to reiterate it,</p> <p>8 but we didn't have the financial means to pay</p> <p>9 somebody to be a shift supervisor.</p> <p>10 Q. Okay. Well, Myles had the human being</p> <p>11 means to perform CPR when he found Lacey not</p> <p>12 breathing; correct?</p> <p>13 A. He had the --</p> <p>14 Q. He had the ability to perform CPR?</p> <p>15 A. The ability and the training, yes.</p> <p>16 Q. Okay. And did he tell you he froze?</p> <p>17 A. I -- I believe so, yes.</p> <p>18 Q. He told Zachmeier he freaked out.</p> <p>19 A. Okay. Well, I don't remember the exact</p> <p>20 words, but --</p> <p>21 Q. All right. And the result of his freezing</p> <p>22 or freaking out was she laid there for over two and</p> <p>23 a half minutes when he decided to leave and get</p> <p>24 somebody else to do the job. Do you find that</p> <p>25 acceptable?</p>	<p style="text-align: right;">67</p> <p>1 and shoot him. I'm asking you is it a failure?</p> <p>2 MR. GRANT BAKKE: Object to form.</p> <p>3 Q. (MR. NOEL CONTINUING) If -- if I do -- I</p> <p>4 don't deal with saving lives on my job, but if I do</p> <p>5 something wrong and -- and against policy or</p> <p>6 against the rules, I wouldn't be surprised if</p> <p>7 someone held me accountable for it. Do you</p> <p>8 understand where I'm going?</p> <p>9 A. There's accountability --</p> <p>10 Q. Okay. So was --</p> <p>11 A. -- every day and --</p> <p>12 Q. -- was his --</p> <p>13 A. -- every scenario.</p> <p>14 Q. A trained CO leaves a person not</p> <p>15 breathing, she's there for over two and a half</p> <p>16 minutes, is that a failure?</p> <p>17 MR. GRANT BAKKE: Object to form.</p> <p>18 THE WITNESS: Where I say he acted in good</p> <p>19 faith was he wasn't able to function at that time</p> <p>20 with the scenario that was there and he left to get</p> <p>21 somebody to help.</p> <p>22 Q. (MR. NOEL CONTINUING) Was that a failure?</p> <p>23 MR. GRANT BAKKE: Object to form.</p> <p>24 THE WITNESS: I don't feel in my eyes that</p> <p>25 it's acceptable.</p>

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<p style="text-align: right;">68</p> <p>1 Q. (MR. NOEL CONTINUING) Okay. Not</p> <p>2 consistent with policy?</p> <p>3 A. Correct.</p> <p>4 Q. And in terms -- there -- and I heard what</p> <p>5 you're saying earlier is in June of 2020 there were</p> <p>6 no -- there were no real identification of somebody</p> <p>7 being a shift supervisor at the Rolette County</p> <p>8 Jail. Fair?</p> <p>9 A. Fair.</p> <p>10 MR. GRANT BAKKE: Object as</p> <p>11 mischaracterization.</p> <p>12 Q. (MR. NOEL CONTINUING) And would that mean</p> <p>13 that if any correctional officer, whether they're</p> <p>14 working the control room or the floor, would be</p> <p>15 able to decide, you know, we need to get an inmate</p> <p>16 to the hospital, would a correctional officer be</p> <p>17 able to make the decision on --</p> <p>18 A. Sorry to recap there. Anybody in the</p> <p>19 correction facility have the ability to do what?</p> <p>20 Q. Yeah. So let's say you have -- is -- is</p> <p>21 dispatch considered a jail post?</p> <p>22 A. By DOCR standards, no.</p> <p>23 Q. Okay. And it's not by Rolette County</p> <p>24 policy either, is it?</p> <p>25 A. I don't recall the policy off the top of</p>	<p style="text-align: right;">70</p> <p>1 rotate.</p> <p>2 Q. Yep. And if you have on -- on a given</p> <p>3 shift -- let's just take the June 3, June 4, 6 p.m.</p> <p>4 to 6 a.m., that's when all this stuff went down;</p> <p>5 right?</p> <p>6 A. Well --</p> <p>7 Q. You can take my word for that.</p> <p>8 A. Okay.</p> <p>9 Q. If one of the three correctional officers</p> <p>10 decides that a particular inmate is presenting a</p> <p>11 situation where he or she needs to be taken to the</p> <p>12 hospital, that correctional officer can get that</p> <p>13 done; correct?</p> <p>14 A. Correct.</p> <p>15 Q. They -- they don't need -- a correctional</p> <p>16 officer doesn't need approval from some higher-up</p> <p>17 to get an inmate who he or she believes needs</p> <p>18 medical attention to the hospital?</p> <p>19 A. Again, it's not that simple of a yes-or-no</p> <p>20 answer. There's times where they have called</p> <p>21 somebody to -- to ask questions, but they do have</p> <p>22 the ability, yes, to call an ambulance or -- I</p> <p>23 wouldn't say at that time they had the ability to</p> <p>24 transport inmates to and from hospitals</p> <p>25 themselves --</p>
<p style="text-align: right;">69</p> <p>1 my head.</p> <p>2 Q. All right. So the two jail posts in June</p> <p>3 of 2020 were master control and the floor; correct?</p> <p>4 A. Well, it's -- it's not that easy --</p> <p>5 Q. Okay.</p> <p>6 A. -- due to the layout of our building at</p> <p>7 that time. We've since changed our building --</p> <p>8 excuse me -- but at that time dispatch was just off</p> <p>9 the door of control, so they were all in that area.</p> <p>10 Since, we've moved 911 and dispatch to a separate</p> <p>11 room. I don't know if that answers your --</p> <p>12 Q. Understood. It does.</p> <p>13 A. Okay.</p> <p>14 Q. In June of 2020, did the -- did the</p> <p>15 officer working dispatch have responsibilities for</p> <p>16 taking care of inmates?</p> <p>17 A. Again, it's -- it's not that easy to</p> <p>18 answer. Yes, had the ability to. For an example,</p> <p>19 if -- if there's a female working dispatch and</p> <p>20 there's a male working corrections and a male</p> <p>21 working the floor and a female gets brought in,</p> <p>22 that female has to leave dispatch to go book in the</p> <p>23 female. Does that make sense?</p> <p>24 Q. It does.</p> <p>25 A. Okay. So it -- they have the ability to</p>	<p style="text-align: right;">71</p> <p>1 Q. Mm-hmm.</p> <p>2 A. -- because at that time we had a staff of</p> <p>3 three and that was the minimum staff that we could</p> <p>4 have for our facility, so none of them could leave</p> <p>5 the facility. So a deputy would have to transport,</p> <p>6 and I believe -- there's been such a high turnover</p> <p>7 rate at our facility that I don't recall if we were</p> <p>8 full staffed or not. I would -- I would assume</p> <p>9 that we were not full staffed, but there's times</p> <p>10 when we only have one deputy working the whole</p> <p>11 county. So on a medical transport, it would create</p> <p>12 other scenarios.</p> <p>13 Q. But the number one -- the first step to</p> <p>14 take is to call an ambulance; right?</p> <p>15 A. That's --</p> <p>16 MR. GRANT BAKKE: Object to form.</p> <p>17 Q. (MR. NOEL CONTINUING) If --</p> <p>18 A. -- one of the options.</p> <p>19 Q. Okay.</p> <p>20 A. Or one of the abilities that they would</p> <p>21 have.</p> <p>22 Q. All right. So I guess what I'm trying to</p> <p>23 get to as the bottom-line scenario of like if -- if</p> <p>24 a correctional officer decides an inmate needs</p> <p>25 outside medical attention immediately, they can</p>

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<p style="text-align: right;">72</p> <p>1 summon an ambulance on their own to get that</p> <p>2 moving; fair?</p> <p>3 A. Yes.</p> <p>4 Q. And then was there ever a time in your</p> <p>5 tenure as sheriff where ambulances were refusing to</p> <p>6 show up to the Rolette County Jail?</p> <p>7 A. I apologize, there's -- we've had -- since</p> <p>8 I've been sheriff, there's been so many things that</p> <p>9 have happened in our county and I'm so used to</p> <p>10 seeing cop lights, fire lights and ambulance</p> <p>11 lights, it all blurs into one thing. So I -- I</p> <p>12 don't recall that. I know we -- we have had</p> <p>13 meetings with the Rolla hospital and the Quentin</p> <p>14 Burdick hospital in Belcourt. We've had meetings</p> <p>15 about radio issues or -- we call it a trip sheet.</p> <p>16 If an ambulance goes out to somewhere and then they</p> <p>17 go back to base, we have to send them a little</p> <p>18 report for their -- for their stats or records.</p> <p>19 I -- I don't -- there's been issues, but I -- I</p> <p>20 don't know if -- if it was failure to come or not.</p> <p>21 Q. And maybe we can be more specific. Do you</p> <p>22 recall a situation in your tenure as sheriff where</p> <p>23 a correctional officer tried to summon an ambulance</p> <p>24 to the jail and the ambulance refused to show up?</p> <p>25 A. I -- I don't recall anybody -- I -- I know</p>	<p style="text-align: right;">74</p> <p>1 A. I -- I remember releasing one. I don't</p> <p>2 remember word for word.</p> <p>3 Q. Okay. Do you -- why did you do that? Why</p> <p>4 did you do the public statement?</p> <p>5 A. If I remember correct, we were getting</p> <p>6 requests or questions.</p> <p>7 Q. All right. And what was your intent in</p> <p>8 putting out the public statement? What did you</p> <p>9 want to communicate?</p> <p>10 A. I believe -- and I'd have to see my</p> <p>11 statement. I'm -- I believe in there I stated that</p> <p>12 the jail was being closed, so I wanted to make that</p> <p>13 aware, and then that we would be working with DOCR</p> <p>14 closely to remedy the -- the concerns or issues. I</p> <p>15 don't remember word for word, but I remember</p> <p>16 recent -- releasing something around those lines.</p> <p>17 Q. All right. And -- and we've got it, so</p> <p>18 I'm just going to -- I'll mark it and have you talk</p> <p>19 about it. Do you know if you would have had cause</p> <p>20 of death information before the autopsy was</p> <p>21 completed?</p> <p>22 A. I'm sorry.</p> <p>23 Q. Do you know if you -- let's -- let's ask</p> <p>24 more specifically. Do you know if you had</p> <p>25 toxicology information on Lacey before the autopsy</p>
<p style="text-align: right;">73</p> <p>1 there's been issues that we've -- we've met with</p> <p>2 and addressed. To list all of them or -- or --</p> <p>3 I -- I can't remember. Sorry.</p> <p>4 Q. Nothing comes to mind, and obviously the</p> <p>5 first step in seeing if -- if an ambulance is going</p> <p>6 to show up is to call; right?</p> <p>7 A. Correct.</p> <p>8 MR. NOEL: Okay. All right. Why don't we</p> <p>9 take ten minutes and we'll get -- we'll get --</p> <p>10 THE WITNESS: Is anybody else cold?</p> <p>11 MR. NOEL: -- reorganized.</p> <p>12 THE WITNESS: I thought you said it was</p> <p>13 going to be warm --</p> <p>14 THE VIDEOGRAPHER: We're off --</p> <p>15 THE WITNESS: -- in here.</p> <p>16 THE VIDEOGRAPHER: -- the record at</p> <p>17 10:01 a.m.</p> <p>18 (Recessed at 10:01 a.m. and reconvened at</p> <p>19 10:13 a.m.)</p> <p>20 THE VIDEOGRAPHER: This is the beginning</p> <p>21 of Media Number 2. We are back on the record at</p> <p>22 10:13 a.m.</p> <p>23 Q. (MR. NOEL CONTINUING) Sheriff Gustafson,</p> <p>24 do you remember you made a -- like a public</p> <p>25 statement relating to this incident?</p>	<p style="text-align: right;">75</p> <p>1 was completed?</p> <p>2 A. I don't recall.</p> <p>3 Q. All right.</p> <p>4 MR. NOEL: Why don't we mark that one.</p> <p>5 What number are we on?</p> <p>6 THE REPORTER: 90.</p> <p>7 (Deposition Exhibit 90 was marked for</p> <p>8 identification.)</p> <p>9 Q. (MR. NOEL CONTINUING) All right.</p> <p>10 Sheriff, Exhibit 90 is Bates-stamped DOCR 1928.</p> <p>11 Does this look like the public statement that you</p> <p>12 issued?</p> <p>13 A. Yes, it looks like the one I released.</p> <p>14 Q. All right. And if we go through it,</p> <p>15 obviously you wrote it on June 19 of 2020; correct?</p> <p>16 A. That's what it says, yes.</p> <p>17 Q. All right. So like two weeks or</p> <p>18 thereabouts after Lacey's death; true?</p> <p>19 A. Yes.</p> <p>20 Q. And I'll just read it. It says, "Today,</p> <p>21 June 19, 2020, I was served with an order from the</p> <p>22 North Dakota Department of Corrections. The Order</p> <p>23 requires the closure of our jail as of June 22,</p> <p>24 2020. The primary basis for the order was the</p> <p>25 failure to follow procedures. The order recognizes</p>

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<p style="text-align: right;">76</p> <p>1 the death on June 4, 2020."</p> <p>2 Did I get the first paragraph correct?</p> <p>3 A. Correct.</p> <p>4 Q. What was the DOCR's communication to you</p> <p>5 in terms of failure to follow procedures? What</p> <p>6 specifically were they pointing to?</p> <p>7 A. I'd have to read the report again.</p> <p>8 Q. Okay.</p> <p>9 MR. NOEL: 65.</p> <p>10 THE WITNESS: 65?</p> <p>11 MR. NOEL: 65.</p> <p>12 Q. (MR. NOEL CONTINUING) And just take what</p> <p>13 time you need with the Exhibit 65 to be able to</p> <p>14 answer that. Okay?</p> <p>15 MR. NOEL: Can we go off the record while</p> <p>16 he reads it.</p> <p>17 THE VIDEOGRAPHER: We're off the record at</p> <p>18 10:18 a.m.</p> <p>19 (Recessed at 10:18 a.m. and reconvened at</p> <p>20 10:23 a.m.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record at 10:23 a.m.</p> <p>23 Q. (MR. NOEL CONTINUING) All right. Sheriff</p> <p>24 Gustafson, you had a chance to read over Exhibit 65</p> <p>25 sufficiently to answer a couple questions about it?</p>	<p style="text-align: right;">78</p> <p>1 two separate things. Did you agree with the DOCR's</p> <p>2 assessment in the closure order that there was a</p> <p>3 failure to follow procedures, specifically Standard</p> <p>4 21, 32 and 59?</p> <p>5 A. I read their closure order and accepted</p> <p>6 it. It's always tough to agree with everything.</p> <p>7 But, yeah, I agreed and accepted it.</p> <p>8 Q. Okay. And then the next paragraph states</p> <p>9 that there's an overwhelming drug problem in our</p> <p>10 community. That problem is the chief cause of this</p> <p>11 tragedy. I am committed to retraining current</p> <p>12 staff and acquiring additional staff to assist with</p> <p>13 combating this problem.</p> <p>14 Did I read that correctly?</p> <p>15 A. Correct.</p> <p>16 Q. And going back to the first paragraph, do</p> <p>17 you believe that the Rolette County Jail's failure</p> <p>18 to follow procedures played any causal role in</p> <p>19 Lacey's death?</p> <p>20 MR. GRANT BAKKE: Objection. Calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: Reading DOCR report and I</p> <p>23 believe BCI, that was their conclusion.</p> <p>24 Q. (MR. NOEL CONTINUING) Okay. What's</p> <p>25 your -- do you believe that the Rolette County</p>
<p style="text-align: right;">77</p> <p>1 A. Correct.</p> <p>2 Q. And if you ever need to refer back to it,</p> <p>3 let me know. We might go through it in more detail</p> <p>4 in a second too.</p> <p>5 So getting back to your statement,</p> <p>6 Exhibit 90, the primary basis for the order was for</p> <p>7 failure to follow procedures, and after reading</p> <p>8 Exhibit 65 -- which is the order; correct?</p> <p>9 A. Correct.</p> <p>10 Q. -- can you tell me what your understanding</p> <p>11 of that failure to follow procedures was that was</p> <p>12 identified by the DOCR?</p> <p>13 A. The failure to comply with our policy and</p> <p>14 procedures, standard -- I believe it was Standard</p> <p>15 21, Standard 32 and standard -- there was one more</p> <p>16 standard in there. Sorry.</p> <p>17 Q. 59.</p> <p>18 A. 59 at the end of page 4. So it said we</p> <p>19 had three noncompliance, I believe is how they said</p> <p>20 it.</p> <p>21 Q. And did you accept the DOCR's findings in</p> <p>22 that regard? In other words, did you agree that</p> <p>23 there were failure to follow those procedures?</p> <p>24 A. I -- did you say did I --</p> <p>25 Q. Did you -- and let me -- let me -- I asked</p>	<p style="text-align: right;">79</p> <p>1 Jail's failure to follow certain procedures played</p> <p>2 a causal role in Lacey's death?</p> <p>3 MR. GRANT BAKKE: Objection. Calls for</p> <p>4 speculation.</p> <p>5 THE WITNESS: I -- I believe I want myself</p> <p>6 and my staff to always grow and continue to get</p> <p>7 better, so every scenario we have we could have did</p> <p>8 it better than we did.</p> <p>9 Q. (MR. NOEL CONTINUING) Right. So that's</p> <p>10 the political answer. I need the court answer. In</p> <p>11 the second paragraph you say that the drug problem</p> <p>12 was the chief cause of this tragedy; right?</p> <p>13 A. Those were my words, yes.</p> <p>14 Q. All right. And my question is do you</p> <p>15 believe that the Rolette County Jail's failure to</p> <p>16 follow procedures played a causal role in Lacey's</p> <p>17 death?</p> <p>18 MR. GRANT BAKKE: Objection. Calls for</p> <p>19 speculation. Asked and answered.</p> <p>20 THE WITNESS: I -- I always want my staff</p> <p>21 to get better, so it's -- it's tough to -- you can</p> <p>22 have a -- a pretty perfect scenario and it'll never</p> <p>23 be perfect. You could always be better at it. So</p> <p>24 could have done a better job at this, yes.</p> <p>25 Q. (MR. NOEL CONTINUING) How did -- how did</p>

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<p style="text-align: right;">80</p> <p>1 you go about determining that drugs was the chief</p> <p>2 cause?</p> <p>3 A. How did I go about --</p> <p>4 Q. Yeah, you wrote it.</p> <p>5 A. -- determining --</p> <p>6 Q. You told it to the public, so how did you</p> <p>7 come to the conclusion that drugs was the chief</p> <p>8 cause of this tragedy?</p> <p>9 A. I believe in the re -- the -- I don't know</p> <p>10 if it was the reports I read or the statements that</p> <p>11 she admitted to being under the influence of</p> <p>12 methamphetamine.</p> <p>13 Q. Right. But you didn't know what her cause</p> <p>14 of death was on June 19 of 2020, did you?</p> <p>15 A. I am not a doctor, no. It appeared to me</p> <p>16 that it -- it was an overdose. Again, I'm not a</p> <p>17 doctor, but that was my -- my thought.</p> <p>18 Q. All right. So your non-doctor self saw</p> <p>19 fit to blame drugs as the chief cause, and I'm</p> <p>20 wondering as the sheriff and the top jail official</p> <p>21 if you can tell me whether or not the failure to</p> <p>22 follow procedures played a causal role in the</p> <p>23 death. That's your area.</p> <p>24 MR. GRANT BAKKE: Objection. Calls for</p> <p>25 speculation. Asked and answered.</p>	<p style="text-align: right;">82</p> <p>1 A. I -- I'm going to stand by my words, yes.</p> <p>2 Q. "I'm committed to retraining current staff</p> <p>3 and acquiring additional staff to assist with</p> <p>4 combating this problem."</p> <p>5 What did you have in mind when you wrote</p> <p>6 that first phrase, "I'm committed to retraining</p> <p>7 staff"? What was the retraining going to be?</p> <p>8 A. On anything in our facility, to continue</p> <p>9 to grow and get better, specifically we were</p> <p>10 talking about booking and observations.</p> <p>11 Q. Okay. And what specifically with regard</p> <p>12 to booking? Let's take that one first.</p> <p>13 A. In broad terms, to try to ask the -- more</p> <p>14 questions of whether there's any type of alcohol</p> <p>15 or -- or illegal drugs -- excuse me --</p> <p>16 Q. And --</p> <p>17 A. -- or mental health issues or any other</p> <p>18 issues that may be physical or -- or emotional.</p> <p>19 Q. And then you understand that there wasn't</p> <p>20 a -- the medical intake and the suicide screen</p> <p>21 forms weren't completed in booking?</p> <p>22 A. I learned after the fact, yes.</p> <p>23 Q. All right. And that would be against</p> <p>24 policy; correct?</p> <p>25 A. I -- yes.</p>
<p style="text-align: right;">81</p> <p>1 Q. (MR. NOEL CONTINUING) Do you see why I'm</p> <p>2 getting frustrating? You're opining on a cause of</p> <p>3 a death in an area that you're not an expert --</p> <p>4 drugs, chief cause -- but you don't want to tell me</p> <p>5 whether or not you think that the jail's failure to</p> <p>6 follow procedures played a causal role in Lacey's</p> <p>7 death. That's the question I want an answer to.</p> <p>8 Do you think that the jail's failure to follow</p> <p>9 procedures played a causal role in Lacey's death?</p> <p>10 MR. GRANT BAKKE: Objection. Asked and</p> <p>11 answered. Argumentative. Calls for speculation.</p> <p>12 THE WITNESS: Do I -- I think we could</p> <p>13 have did a better job, yes. Absolutely. So I --</p> <p>14 we could always get better in our areas.</p> <p>15 Q. (MR. NOEL CONTINUING) Well, does that --</p> <p>16 does that mean the answer to my question about</p> <p>17 failure to follow procedures played a causal role</p> <p>18 in her death is a yes?</p> <p>19 MR. GRANT BAKKE: Objection. Asked and</p> <p>20 answered.</p> <p>21 THE WITNESS: I don't know. I wasn't</p> <p>22 there at the time, sir.</p> <p>23 Q. (MR. NOEL CONTINUING) Okay. Are you</p> <p>24 standing by the -- the drug problem in the</p> <p>25 community being the chief cause of the tragedy?</p>	<p style="text-align: right;">83</p> <p>1 Q. And then --</p> <p>2 A. If -- if I can go in a little bit more on</p> <p>3 that one, though. It -- in our area or probably</p> <p>4 every area, nobody wants to be -- well, very few --</p> <p>5 I have had some that want to be in jail because</p> <p>6 it's too cold and they don't have food or whatever,</p> <p>7 but not everybody wants to be at the facility so</p> <p>8 they're not always the most pleasurable or -- or</p> <p>9 accommodating to ask and answer questions.</p> <p>10 So it is -- it was not uncommon for people</p> <p>11 not to ask -- or answer questions. I shouldn't say</p> <p>12 ask -- for the person getting booked in, not to</p> <p>13 answer the correctional officer's questions, and</p> <p>14 then placed in a holding cell until they were</p> <p>15 willing or able to answer the booking questions.</p> <p>16 Q. You read Dixie Gladue's deposition?</p> <p>17 A. Gladue.</p> <p>18 Q. Gladue.</p> <p>19 A. Okay.</p> <p>20 Q. She said that Lacey was unable to</p> <p>21 participate in the booking process, not unwilling;</p> <p>22 correct?</p> <p>23 A. I believe that's what it said.</p> <p>24 Q. Can you see the difference between unable</p> <p>25 and unwilling?</p>

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<p style="text-align: right;">84</p> <p>1 MR. GRANT BAKKE: Object to form.</p> <p>2 THE WITNESS: I don't know. I wasn't</p> <p>3 there at the time.</p> <p>4 Q. (MR. NOEL CONTINUING) Do you remember</p> <p>5 watching the video of April Azure trying to get</p> <p>6 underwear on her?</p> <p>7 A. I vaguely remember it, yes.</p> <p>8 Q. Do you remember Lacey Higdem having</p> <p>9 trouble standing up in that video?</p> <p>10 A. I don't know, it's been such a long time.</p> <p>11 It's four years since I've watched the video, I --</p> <p>12 I don't recall.</p> <p>13 Q. Okay. Well, we're going to watch it again</p> <p>14 later and I'm going to ask you if you think -- can</p> <p>15 you tell if -- if Lacey was unable or unwilling to</p> <p>16 stand up on her own, so keep that in mind. All</p> <p>17 right?</p> <p>18 A. Okay.</p> <p>19 Q. What about with regard to observation and</p> <p>20 retraining from your statement?</p> <p>21 A. So going back to a question I answered</p> <p>22 earlier where we were noncompliant on our 15-minute</p> <p>23 checks because we were doing them on the</p> <p>24 15 minutes, so to make sure we were following</p> <p>25 irregular 15-minute watch was -- was something I</p>	<p style="text-align: right;">86</p> <p>1 Rolette County jail administrator ever performed</p> <p>2 kind of random audits of cell checks, look at</p> <p>3 video, see if the log matches up to what I'm seeing</p> <p>4 on video?</p> <p>5 A. I don't remember going into like that deep</p> <p>6 of it. I would watch video. Never -- everything</p> <p>7 appeared to be normal on the -- the bits that I</p> <p>8 would watch. Most of it was -- for example, at six</p> <p>9 o'clock at shift change, I would pull -- or not</p> <p>10 pull -- but I would watch video on that to make</p> <p>11 sure people were coming to work on time and</p> <p>12 somebody wasn't punching in for somebody else.</p> <p>13 Watch throughout the night, make sure people were</p> <p>14 performing their duties, but that's bits and pieces</p> <p>15 out of the -- the hours and hours and hours of</p> <p>16 work --</p> <p>17 Q. Right.</p> <p>18 A. -- that's being done.</p> <p>19 Q. Yeah. And -- and to drill down on that a</p> <p>20 little bit, the -- the December 4, 2018, inspection</p> <p>21 identified an observation deficiency. You remember</p> <p>22 talking about that?</p> <p>23 A. In December of '18?</p> <p>24 Q. Yeah. That was Exhibit 81, I think.</p> <p>25 A. Oh, I -- no, I don't remember.</p>
<p style="text-align: right;">85</p> <p>1 wanted to make sure we trained on. And the</p> <p>2 physical check, the hourly physical check, I</p> <p>3 believe we had an instance where it -- it changes a</p> <p>4 little bit each time, it felt like, where you had</p> <p>5 to walk -- you know, to see them was good and then</p> <p>6 it -- you've got to physically go in there to --</p> <p>7 you've got to walk right by them, touch them</p> <p>8 basically, which makes a lot of inmates upset when</p> <p>9 you're doing it and waking them up.</p> <p>10 But one of the things we didn't do was</p> <p>11 open the bathroom door, I think, so then -- so each</p> <p>12 time we're getting told, well, you've got to</p> <p>13 tighten up right here, get a little better at this,</p> <p>14 and -- and we -- we started to do that --</p> <p>15 Q. All right.</p> <p>16 A. -- for our continual training.</p> <p>17 Q. As Rolette County sheriff, did you ever</p> <p>18 get word from anyone that at any point correctional</p> <p>19 officers were logging cell checks that weren't</p> <p>20 being completed?</p> <p>21 A. I believe Agent Zachmeier brought it to my</p> <p>22 attention on this case.</p> <p>23 Q. All right. Anything before that?</p> <p>24 A. Not to my knowledge.</p> <p>25 Q. Okay. Do you know if before Lacey the</p>	<p style="text-align: right;">87</p> <p>1 Q. All right. In 2019, do you know -- you</p> <p>2 don't -- you don't need to look at it unless you</p> <p>3 want to.</p> <p>4 A. Well, if we're talking about it --</p> <p>5 Q. Go ahead.</p> <p>6 A. -- I -- oh, so -- I -- the reason I don't</p> <p>7 remember is I wasn't jail administrator in December</p> <p>8 of '18.</p> <p>9 Q. I know that, but you were sheriff in 2019.</p> <p>10 A. Correct.</p> <p>11 Q. And when you came on as sheriff, did you</p> <p>12 have any idea that the jail had been identified as</p> <p>13 deficient in a life safety standard --</p> <p>14 A. No.</p> <p>15 Q. -- the previous --</p> <p>16 MR. GRANT BAKKE: Object to form.</p> <p>17 Q. (MR. NOEL CONTINUING) -- year?</p> <p>18 A. Not --</p> <p>19 MR. GRANT BAKKE: Object to form.</p> <p>20 THE WITNESS: Not to my knowledge.</p> <p>21 Q. (MR. NOEL CONTINUING) All right. Is --</p> <p>22 Standard 32 is a big deal; wouldn't you agree with</p> <p>23 that?</p> <p>24 MR. GRANT BAKKE: Object to form.</p> <p>25 THE WITNESS: I believe all of our 108</p>

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<p style="text-align: right;">88</p> <p>1 standards are a big deal. Otherwise, DOCR wouldn't</p> <p>2 have came up with them.</p> <p>3 Q. (MR. NOEL CONTINUING) All right. Are</p> <p>4 there certain standards that the -- that the jail</p> <p>5 people and the correctional experts talk about as</p> <p>6 life safety standards, or do you believe they're</p> <p>7 all life safety standards?</p> <p>8 MR. GRANT BAKKE: Object to form.</p> <p>9 THE WITNESS: I -- I don't know. They --</p> <p>10 they list in there some of them that are life</p> <p>11 safety --</p> <p>12 Q. (MR. NOEL CONTINUING) You --</p> <p>13 A. -- I believe.</p> <p>14 Q. -- trust their judgment on that?</p> <p>15 A. When you've been in law enforcement as</p> <p>16 long as I have, it's hard to trust everybody, but I</p> <p>17 believe DOCR does a very good job of -- of their</p> <p>18 job. Yes.</p> <p>19 Q. Did you ever have trust issues with the</p> <p>20 DOCR while you were sheriff of Rolette County?</p> <p>21 A. Describe "trust issues," in your opinion.</p> <p>22 Q. Well, you just said it.</p> <p>23 A. Well, I --</p> <p>24 Q. Tell me everything.</p> <p>25 A. -- as -- as a human, I don't -- it's hard</p>	<p style="text-align: right;">90</p> <p>1 A. Again, in my line of work, I think</p> <p>2 everybody's out to get me.</p> <p>3 Q. Fair enough. Go back to Exhibit 83.</p> <p>4 That's the mortality review.</p> <p>5 A. How do I do this? Why don't I flip these</p> <p>6 and then I can -- I'm sorry, you said 83?</p> <p>7 Q. 83, yeah. Okay. So we started and then</p> <p>8 stopped on the bottom of page 2, DOCR 1016.</p> <p>9 Remember we were talking about the good faith?</p> <p>10 We're not going to talk about that anymore. And</p> <p>11 then there's bullets below that. Do you see that?</p> <p>12 A. I'm sorry, where are you at?</p> <p>13 Q. So it says Security Observations --</p> <p>14 A. Okay.</p> <p>15 Q. -- and Recommendation, and then we talk</p> <p>16 about the good faith attempt to resuscitate. And</p> <p>17 then you say, "Some recommendations follow," and</p> <p>18 then it goes on to list some. Do you --</p> <p>19 A. Okay.</p> <p>20 Q. -- see where I'm at?</p> <p>21 A. Yep.</p> <p>22 Q. The first one that you list is, "CO should</p> <p>23 carry Master Keys at all time when working jail</p> <p>24 floor"; correct?</p> <p>25 A. That's what it says, correct.</p>
<p style="text-align: right;">89</p> <p>1 to trust anybody. I -- if I don't know you, it's</p> <p>2 hard to trust you. But my visits with Mr. Lance</p> <p>3 Anderson and Bob Werlinger were -- were mostly</p> <p>4 good. They were all professional. When I say</p> <p>5 "mostly good," I -- I know I talked about the</p> <p>6 second time I watched the video where Lance</p> <p>7 Anderson brought it in and played it for the</p> <p>8 commissioners and the -- the auditor. I did not</p> <p>9 like that. The reason I did not like that was I'm</p> <p>10 trained in dealing -- I'm the coroner of my county</p> <p>11 so I -- I deal with death quite often, but my</p> <p>12 auditor and my commissioners were not ready or</p> <p>13 trained to watch that video.</p> <p>14 So I -- I disagreed with Lance on that</p> <p>15 one, but overall his job, he's been very -- very</p> <p>16 professional and good at his job other than the one</p> <p>17 thing I disagreed with there.</p> <p>18 Q. All right. Any trust issues with the DOCR</p> <p>19 with you as sheriff of Rolette County?</p> <p>20 A. For example, if -- in -- in his report</p> <p>21 I -- I don't think he would go out of his way to</p> <p>22 fabricate or falsify his report. So, no, I trust</p> <p>23 his professionalism.</p> <p>24 Q. Okay. Did you think he was out to get</p> <p>25 you?</p>	<p style="text-align: right;">91</p> <p>1 Q. Did you write that?</p> <p>2 A. I believe the -- I physically didn't write</p> <p>3 it. I believe either Kim or Mitch would have been</p> <p>4 typing this up.</p> <p>5 Q. Okay.</p> <p>6 A. But I signed it, yes. I was aware of</p> <p>7 this.</p> <p>8 Q. I mean this is your memo; right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay.</p> <p>11 A. You're -- you're asking if I wrote it,</p> <p>12 though, and I'm just being honest and saying I</p> <p>13 didn't write it. One of my others did while I was</p> <p>14 there.</p> <p>15 Q. Yeah. I -- I sensed some hesi --</p> <p>16 hesitation on -- on willingness to embrace that</p> <p>17 first bullet point. So was one of your</p> <p>18 recommendations that the CO should carry master</p> <p>19 keys at all times when working jail floor?</p> <p>20 A. Yeah. That's what I got in here, yes.</p> <p>21 Q. All right. Why did you recommend that?</p> <p>22 A. I'd have to go back and -- and go over our</p> <p>23 stuff again, but in -- in the event that control</p> <p>24 room is unable to open a door -- so the control</p> <p>25 room is electronic and that's the one that opens</p>

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<p style="text-align: right;">92</p> <p>1 every door. So if they're unable to open a door</p> <p>2 and there's a medical emergency in there and you</p> <p>3 don't have keys and you can't get in there, that</p> <p>4 was the reason for carrying a key, I believe. I'd</p> <p>5 have to go back and look at our stuff, but that's</p> <p>6 what feels right to me right now.</p> <p>7 Q. So Brunelle was working the jail floor on</p> <p>8 the Lacey shift; correct?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. All right. Do you know if he had the</p> <p>11 master keys on him at that point or not?</p> <p>12 A. I don't recall.</p> <p>13 Q. So is the first bullet point at the bottom</p> <p>14 of page 2 of Exhibit 3 a general recommendation or</p> <p>15 a Lacey Higdem-specific recommendation?</p> <p>16 A. I don't recall.</p> <p>17 Q. Go on to the next page. "CO should wear</p> <p>18 security belt with radio and Narcan."</p> <p>19 Was that one of your recommendations?</p> <p>20 A. Correct.</p> <p>21 Q. And why did you recommend that?</p> <p>22 A. The -- the security belt would allow them</p> <p>23 to carry the keys and the Narcan and -- and a</p> <p>24 radio, where we -- we didn't always have the -- the</p> <p>25 belt ability or -- or have the -- what do you want</p>	<p style="text-align: right;">94</p> <p>1 the camera or computer, he would assist with that.</p> <p>2 To my knowledge, it was -- I believe what he stated</p> <p>3 was it was taken care of.</p> <p>4 Q. And do you know if that was before the</p> <p>5 Lacey death?</p> <p>6 A. I don't recall.</p> <p>7 Q. And Narcan, what's that?</p> <p>8 A. Narcan is a -- a tool that we will use for</p> <p>9 somebody that we feel is overdosed. It's a nasal</p> <p>10 canister -- I don't want to say canister -- a nasal</p> <p>11 thing --</p> <p>12 Q. You shoot it up their nose --</p> <p>13 A. Yep.</p> <p>14 Q. -- right?</p> <p>15 A. Yep. And it's supposed to combat the --</p> <p>16 whatever's in their system.</p> <p>17 Q. Was there Narcan available at the Rolette</p> <p>18 County Jail on June 3 and 4 of 2020?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did -- did poli -- did your jail policy</p> <p>21 require that Narcan be available at the jail in --</p> <p>22 on June 3 and 4 of 2020?</p> <p>23 A. I would have to read the policy on that.</p> <p>24 Like I said, our policy has the ability to change</p> <p>25 every year --</p>
<p style="text-align: right;">93</p> <p>1 to call it -- the -- it wasn't part of our uniform</p> <p>2 that we had on hand, I guess.</p> <p>3 Q. All right. Do you know if this</p> <p>4 recommendation was implemented immediately after</p> <p>5 you wrote the memo?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did any correctional officers prior to</p> <p>8 Lacey's death bring concerns to you about the</p> <p>9 radios not working for them?</p> <p>10 A. I -- I remember hearing a concern of they</p> <p>11 were spotty. For instance, if you're in the</p> <p>12 doorway, they didn't work, but you stepped out or</p> <p>13 in, it worked. Little things like that. But I</p> <p>14 don't recall saying they -- they didn't work or --</p> <p>15 Q. So spotty radio -- the -- the radios</p> <p>16 working was kind of a spotty issue for the COs,</p> <p>17 that was communicated to you?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know whether any steps were taken</p> <p>20 to fix that or get new radios?</p> <p>21 A. I believe at this time we had a 911</p> <p>22 coordinator, Curt Bonn -- he's since retired. He</p> <p>23 was our kind of, quote/unquote, tech guy in our</p> <p>24 facility, so he was in charge of the radios and the</p> <p>25 911, and -- and if we had issues in control with</p>	<p style="text-align: right;">95</p> <p>1 Q. Okay.</p> <p>2 A. -- so I'd have to read the --</p> <p>3 Q. But in June of 2020, you clearly knew that</p> <p>4 overdoses and drug use were a big problem in the</p> <p>5 community that the jail was serving; right?</p> <p>6 A. Correct.</p> <p>7 Q. And then the next one is -- we'll skip</p> <p>8 that one. Let's go to, "Utilize special watch</p> <p>9 forms."</p> <p>10 That's one of the bullets -- that's one of</p> <p>11 your recommendations on Exhibit 83; true?</p> <p>12 A. Exhibit 83. Correct.</p> <p>13 Q. Was that a general recommendation or a</p> <p>14 Lacey Higdem-specific recommendation?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know if Lacey Higdem was ever on</p> <p>17 special watch from June 3 to 4, 2020?</p> <p>18 A. Oh, I don't -- I don't know.</p> <p>19 Q. When -- when you have a death -- this was</p> <p>20 your first jail death --</p> <p>21 A. Correct.</p> <p>22 Q. -- as sheriff?</p> <p>23 A. Correct.</p> <p>24 Q. Did -- were you curious about what</p> <p>25 happened?</p>

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<p style="text-align: right;">96</p> <p>1 A. Yes.</p> <p>2 Q. Did you want to get to the bottom of what</p> <p>3 happened and see did we meet the community's</p> <p>4 expectations or not?</p> <p>5 A. Yes. And -- and the reason I'm a little</p> <p>6 hesitant with my body language on that one is there</p> <p>7 was two separate investigations going on, so my job</p> <p>8 was to hurry up and wait, it felt like.</p> <p>9 Q. Did you use -- did you ever use the Lacey</p> <p>10 Higdem death as a training tool for your</p> <p>11 correctional officers at the Rolette County Jail?</p> <p>12 MR. GRANT BAKKE: Object to form.</p> <p>13 THE WITNESS: I -- I don't remember</p> <p>14 because we were on the -- with DOCR and BCI doing</p> <p>15 their investigations and -- and us on -- I don't</p> <p>16 want to say standby, but us not -- not talking</p> <p>17 about it, we didn't do immediate trainings based on</p> <p>18 this specific event. So that's the only way I can</p> <p>19 answer that question is I -- you know, when we</p> <p>20 weren't talking about it, we weren't talking about</p> <p>21 it so we weren't doing training on it.</p> <p>22 Q. (MR. NOEL CONTINUING) So do you think not</p> <p>23 talking about it helps prevent it from happening in</p> <p>24 the future?</p> <p>25 A. I think when DOCR and BCI says don't talk</p>	<p style="text-align: right;">98</p> <p>1 have been Lance and Bob.</p> <p>2 Q. And did anyone from the BCI tell you not</p> <p>3 to talk about it?</p> <p>4 A. When Zachmeier and I spoke about it, it</p> <p>5 was relayed to me not to visit about it.</p> <p>6 Q. All right. And that was --</p> <p>7 A. Until their invest -- while they were</p> <p>8 doing their investigations.</p> <p>9 Q. All right. Have you had any other</p> <p>10 in-custody deaths at the facility since Lacey?</p> <p>11 A. I'm sorry, you keep asking me the same</p> <p>12 questions. No. This --</p> <p>13 Q. Okay. Not all of us are perfect.</p> <p>14 In your patrol experience, do you use</p> <p>15 scenarios that unfold in the field as -- as real</p> <p>16 life kind of training scenarios for -- for future</p> <p>17 patrol?</p> <p>18 A. Yes.</p> <p>19 Q. And let's get back to the Exhibit 83. One</p> <p>20 of the other bullet point recommendations that you</p> <p>21 have is, "Need some kind of" -- "Need some kind of</p> <p>22 notification system for 15-minute checks"; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Why did you make that recommendation?</p> <p>25 A. To -- to give some type of a -- an example</p>
<p style="text-align: right;">97</p> <p>1 about it right now, it -- we took that and listened</p> <p>2 to what they were saying.</p> <p>3 Q. Do you still have that order on you from</p> <p>4 the DOCR, don't talk about it?</p> <p>5 A. Not everything is written in an order.</p> <p>6 There's recommendations that -- that they suggest.</p> <p>7 Q. Right. But -- and that was a bad</p> <p>8 question.</p> <p>9 By the time they -- these two COs get</p> <p>10 charged, you're free to -- to talk about the --</p> <p>11 well, even without that, did you feel like because</p> <p>12 there was a DOCR and a BCI investigation that you</p> <p>13 couldn't talk to your people about how to prevent</p> <p>14 something like this from happening again?</p> <p>15 A. Again, I didn't -- we did other trainings</p> <p>16 to work and try to prevent anything from -- from</p> <p>17 happening in the future, but specifically this one,</p> <p>18 when -- and I didn't ask DOCR or BCI to give me an</p> <p>19 order when they said don't talk about this, but</p> <p>20 when we talk about trust, I guess I trusted them</p> <p>21 enough when they said don't talk about it, I didn't</p> <p>22 talk about it.</p> <p>23 Q. Okay. Who from DOCR told you not to talk</p> <p>24 about it?</p> <p>25 A. I guess the only two that I've spoke with</p>	<p style="text-align: right;">99</p> <p>1 is when you're cooking in your kitchen, you need to</p> <p>2 set a timer for your oven. So that was -- it --</p> <p>3 and I say that timer because that's one of the</p> <p>4 tools that we implemented was a -- a cook timer, if</p> <p>5 that's the right -- I don't know what the right way</p> <p>6 to clarify that one is, but turned it to</p> <p>7 12 minutes, whether it was digital or the turn one.</p> <p>8 Q. And the -- the thing with the 15-minute</p> <p>9 checks is if you're doing them -- if you're doing</p> <p>10 them all right on the 15 minutes, that defeats the</p> <p>11 purpose of the -- of the special watch; correct?</p> <p>12 A. Yes. They want them in -- what is the</p> <p>13 word they use -- irregular.</p> <p>14 Q. So the inmates can't predict it?</p> <p>15 A. True.</p> <p>16 Q. Now, do you know whether Lacey was ever on</p> <p>17 a 15-minute check on June 3 to 4, 2020?</p> <p>18 A. I don't --</p> <p>19 MR. GRANT BAKKE: Objection. Asked and</p> <p>20 answered.</p> <p>21 THE WITNESS: I don't recall.</p> <p>22 Q. (MR. NOEL CONTINUING) Do you know if the</p> <p>23 "need some kind of notification system" for</p> <p>24 15-minute checks was a general recommendation or a</p> <p>25 Lacey Higdem-specific recommendation?</p>

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<p style="text-align: right;">100</p> <p>1 A. I don't recall specifically.</p> <p>2 Q. And the DOCR reported to you that Lacey</p> <p>3 should have been on 15-minute checks; correct?</p> <p>4 A. I believe that's what they said in their</p> <p>5 report. Yes.</p> <p>6 Q. Do you -- do you disagree with them on</p> <p>7 that?</p> <p>8 A. I wasn't there. It's hard for me to --</p> <p>9 Q. It doesn't matter if you were there or</p> <p>10 not.</p> <p>11 MR. GRANT BAKKE: Objection.</p> <p>12 Argumentative.</p> <p>13 THE WITNESS: I -- I guess if I'm -- I</p> <p>14 don't know what my correction officer is seeing at</p> <p>15 that moment when I'm not in the facility.</p> <p>16 Q. (MR. NOEL CONTINUING) Isn't the sheriff a</p> <p>17 24/7 job?</p> <p>18 A. Sure.</p> <p>19 Q. Okay. Do you only deal with things that</p> <p>20 happen at the jail when you're there?</p> <p>21 A. I only deal with things at the jail when</p> <p>22 they're brought to my attention, so if I'm not</p> <p>23 called, I don't know.</p> <p>24 Q. Okay. How much of your daily focus in</p> <p>25 2020 was on jail operations versus other county law</p>	<p style="text-align: right;">102</p> <p>1 operations before Lacey?</p> <p>2 A. No, because I was -- when Kim no longer</p> <p>3 wanted to be the jail administrator, I had to put</p> <p>4 attention to the jail also. But that didn't mean</p> <p>5 the other duties went away either.</p> <p>6 Q. Sheriff is a full-time job; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Jail administrator's a full-time job too;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. When did Kim say she didn't want to be the</p> <p>12 jail administrator anymore?</p> <p>13 A. I'd have to look in my thing. I believe</p> <p>14 she wrote a thing that said she was resigning as</p> <p>15 the jail administrator --</p> <p>16 Q. All right.</p> <p>17 A. -- or relieving her -- yeah, basically</p> <p>18 resigning from it.</p> <p>19 Q. All right. So back to Exhibit 83 and you</p> <p>20 write down, "Need some kind of notification system</p> <p>21 for 15-minute checks."</p> <p>22 This is your recommendation in a mortality</p> <p>23 review that you completed due to Lacey's death;</p> <p>24 correct?</p> <p>25 A. I -- I wouldn't just specifically say</p>
<p style="text-align: right;">101</p> <p>1 enforcement operations?</p> <p>2 A. My main focus, my -- it -- after the --</p> <p>3 the passing of Lacey in the -- in the jail, my</p> <p>4 focus shifted to the jail. Before that, it was a</p> <p>5 split between all the sheriff duties of the county.</p> <p>6 Q. Okay. So what was the split like before</p> <p>7 Lacey percentagewise, typical day?</p> <p>8 A. Every day changes, but short staffed on</p> <p>9 the deputy side, I would be patrolling the road.</p> <p>10 The -- the administrative side of working with</p> <p>11 grants and payroll to get to the auditor, making</p> <p>12 sure our civil process was being served, our</p> <p>13 warrants were being executed, dealing with the</p> <p>14 contract towns or trying to develop contracts with</p> <p>15 cities for policing. So I'd be at city council</p> <p>16 meetings or visiting with mayors, county</p> <p>17 commissioners, dealing with budget and staffing and</p> <p>18 equipment. I -- it's hard to -- every --</p> <p>19 everything changes at a second or a minute's</p> <p>20 notice, so it's hard to say a structure of this is</p> <p>21 what I do on Monday or this is what I do on</p> <p>22 Tuesday. It -- everything changes every day.</p> <p>23 Q. Okay. Did that narrative help you answer</p> <p>24 the question about what was the percentage of your</p> <p>25 focus on correctional operations versus jail</p>	<p style="text-align: right;">103</p> <p>1 that. It would be to better our facility for --</p> <p>2 for everything in general.</p> <p>3 Q. Okay. Well, look at the title page. I</p> <p>4 didn't think this was going to be this -- this</p> <p>5 difficult. The memo is from you and the title to</p> <p>6 the memo is Mortality Review of Lacey Higdem;</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. First sentence, "On June 23, 2020, a</p> <p>10 mortality review was conducted on the death of</p> <p>11 inmate Lacey Higdem who died in custody of Rolette</p> <p>12 County Jail on June 4, 2020." It goes on and on</p> <p>13 and on. "Summary of any investigation." First of</p> <p>14 all it gives some demographic information about</p> <p>15 Lacey; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Not general demographics about what</p> <p>18 inmates were staying in your jail. Lacey.</p> <p>19 A. Okay.</p> <p>20 Q. Second one is Summary of Investigation,</p> <p>21 and that bullet talks all about stuff that was done</p> <p>22 with regard to Lacey; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. So when we get to recommendations,</p> <p>25 can you tell me -- you don't believe that the needs</p>

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<p style="text-align: right;">104</p> <p>1 some notification system for 15-minute checks was</p> <p>2 Lacey specific; correct?</p> <p>3 MR. GRANT BAKKE: Objection. Asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: I -- like I stated, it would</p> <p>6 be to better our facility.</p> <p>7 Q. (MR. NOEL CONTINUING) Would you have made</p> <p>8 that recommendation if it wasn't for Lacey's death?</p> <p>9 A. If there was any issue that was brought to</p> <p>10 me that -- yeah, I would think we would try to</p> <p>11 implement it to get better.</p> <p>12 Q. Okay. Well, how did the -- how did the</p> <p>13 2019 DOCR inspection turn out for the Rolette</p> <p>14 County Jail while you were sheriff? Were there</p> <p>15 deficiencies noted in there?</p> <p>16 A. I would have to read their thing. I</p> <p>17 believe there was.</p> <p>18 Q. Okay. Which ones?</p> <p>19 A. I -- I don't know. I'd have to read</p> <p>20 the --</p> <p>21 Q. Was inmate observation one of them?</p> <p>22 A. I don't know.</p> <p>23 Q. All right. Were any of the</p> <p>24 recommendations that you made in Exhibit 83 Lacey</p> <p>25 specific?</p>	<p style="text-align: right;">106</p> <p>1 Rolette County sheriff for Lacey's passing in your</p> <p>2 facility?</p> <p>3 MR. GRANT BAKKE: Object to form.</p> <p>4 THE WITNESS: Yeah. I take a hundred</p> <p>5 percent.</p> <p>6 Q. (MR. NOEL CONTINUING) Did you communicate</p> <p>7 that to Lacey's mom at all?</p> <p>8 A. I -- I don't recall. I -- I know I</p> <p>9 contacted her. I -- I don't recall.</p> <p>10 Q. And you contacted her because you had</p> <p>11 the -- the unfortunate job of having to relay</p> <p>12 the -- the news of the death; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know if you talked to her at all</p> <p>15 after that?</p> <p>16 A. I don't recall.</p> <p>17 MR. NOEL: Okay. Does anyone have an</p> <p>18 issue taking an early lunch?</p> <p>19 MR. GRANT BAKKE: No.</p> <p>20 MR. NOEL: Okay.</p> <p>21 THE WITNESS: I thought you were asking</p> <p>22 about my staff. I don't know --</p> <p>23 MR. NOEL: Oh, I'm sorry.</p> <p>24 THE WITNESS: -- they -- they eat when</p> <p>25 they're hungry. I don't know.</p>
<p style="text-align: right;">105</p> <p>1 A. I -- yes, all of them to -- to better our</p> <p>2 facility.</p> <p>3 Q. Okay. That seemed like two kind of</p> <p>4 different answers. So like were any of the</p> <p>5 recommendations in Exhibit 83 Lacey specific --</p> <p>6 MR. GRANT BAKKE: Objection. Asked and</p> <p>7 answered.</p> <p>8 Q. (MR. NOEL CONTINUING) -- only.</p> <p>9 A. I -- I don't know. Again, I would say,</p> <p>10 yes, all of them, and it was to better our</p> <p>11 facility.</p> <p>12 Q. All right. So you've told me -- you've</p> <p>13 mentioned a couple times that you weren't there on</p> <p>14 that shift; correct?</p> <p>15 A. Correct.</p> <p>16 Q. You realize that probably works better for</p> <p>17 a correctional officer than it would for the top</p> <p>18 law enforcement official in Rolette County?</p> <p>19 MR. GRANT BAKKE: Object to form.</p> <p>20 THE WITNESS: I guess I don't understand</p> <p>21 what you're saying.</p> <p>22 Q. (MR. NOEL CONTINUING) In terms --</p> <p>23 let's -- let's look at accountability. Okay. Do</p> <p>24 you think that in terms of -- of accountability --</p> <p>25 first of all, do you take some accountability as</p>	<p style="text-align: right;">107</p> <p>1 MR. NOEL: Yeah. I feel like we should</p> <p>2 take a -- yeah, let's go off the record.</p> <p>3 THE VIDEOGRAPHER: We're off the record at</p> <p>4 11:00 a.m.</p> <p>5 (Recessed at 11:00 a.m. and reconvened at</p> <p>6 11:50 a.m.)</p> <p>7 THE VIDEOGRAPHER: This is the beginning</p> <p>8 of Media Number 3. We are back on the record at</p> <p>9 11:50 a.m.</p> <p>10 Q. (MR. NOEL CONTINUING) All right. We just</p> <p>11 took a brief lunch break and we're back on the</p> <p>12 record. Sheriff Gustafson, can you tell me if you</p> <p>13 recall ever levying discipline for any correctional</p> <p>14 officers during your tenure as sheriff?</p> <p>15 A. Off the top of my head, I do not recall.</p> <p>16 Q. All right. And are you aware during your</p> <p>17 tenure as sheriff of any correctional officers</p> <p>18 being disciplined at all?</p> <p>19 A. I don't recall.</p> <p>20 Q. Were there occasions where you had a</p> <p>21 conversation with one or more correctional officers</p> <p>22 explaining to them that we need to improve in one</p> <p>23 area of jail operations or another?</p> <p>24 A. Did I specific -- I during monthly</p> <p>25 meetings would talk about that, but singling one or</p>

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<p style="text-align: right;">108</p> <p>1 two out specifically, I can't recall that.</p> <p>2 Q. Did you ever talk -- and you yourself --</p> <p>3 with correctional officers about improving on cell</p> <p>4 checks?</p> <p>5 A. During monthly meeting, yes.</p> <p>6 Q. All right. What sorts of things would you</p> <p>7 talk about in that regard?</p> <p>8 A. The rounds had to physically be done every</p> <p>9 hour, not -- not by video or not by looking from a</p> <p>10 door. It had to be throughout the whole thing even</p> <p>11 into the bathrooms like I talked about earlier.</p> <p>12 The -- the 15-minute irregular watch we've talked</p> <p>13 about, not -- don't do them exactly on 15 minutes.</p> <p>14 Do them irregular. Things of that nature.</p> <p>15 Q. You're familiar with the -- you understand</p> <p>16 the cell -- the unit that Lacey was in was B-201?</p> <p>17 A. Okay.</p> <p>18 Q. And that's on the mezzanine level of Cell</p> <p>19 Block B; correct?</p> <p>20 A. Correct. It is on the top level.</p> <p>21 Q. All right. And were -- would a</p> <p>22 correctional officer in June of 2020 been correct</p> <p>23 to say that it was okay to do a cell check on the</p> <p>24 upper level from the ground level of B two -- 200?</p> <p>25 A. Just so I understand your question, are</p>	<p style="text-align: right;">110</p> <p>1 A. Correct.</p> <p>2 Q. All right. This is a one-page policy</p> <p>3 titled Number 1.02, and the chapter is</p> <p>4 Administration and the subject is Administration;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it says that the policy was</p> <p>8 reevaluated on December 16, 2019, by you; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And any reason to disbelieve this isn't a</p> <p>11 true and accurate copy of the policy?</p> <p>12 A. No.</p> <p>13 Q. And you are listed as the jail</p> <p>14 administrator as of December 16, 2019; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Is that accurate?</p> <p>17 A. It says jail administrator on this one,</p> <p>18 12-16 of 2019, the policy that you handed me.</p> <p>19 Q. Well, they all say that. They all say</p> <p>20 you're the jail administrator in 2019 and 2020. Is</p> <p>21 that accurate?</p> <p>22 A. I'm looking at the paper you gave me.</p> <p>23 It's -- it -- it appears accurate. There's been</p> <p>24 times where I was jail administrator and then not</p> <p>25 and then took it back and then was not and then had</p>
<p style="text-align: right;">109</p> <p>1 you saying if somebody's standing on the bottom</p> <p>2 level, was it okay to look up to the top?</p> <p>3 Q. To -- to complete -- to properly complete</p> <p>4 a cell check.</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you ever -- are you aware of</p> <p>7 any discipline being -- being meted out to</p> <p>8 correctional officers during your tenure as sheriff</p> <p>9 specifically related to improper cell checks?</p> <p>10 A. I -- not that I remember. I don't</p> <p>11 remember.</p> <p>12 Q. All right. So the next exhibit will be</p> <p>13 this big book here. It is RC0170 through RC0417.</p> <p>14 It's a handbook with the policy manual.</p> <p>15 (Deposition Exhibit 91 was marked for</p> <p>16 identification.)</p> <p>17 Q. (MR. NOEL CONTINUING) All right. Sheriff</p> <p>18 Gustafson, I'm going to ask you just to hold that</p> <p>19 tight for a second and I'm going to refer you to</p> <p>20 some sections. All right. If you could first go</p> <p>21 to RC -- and it might help for the time being if</p> <p>22 you -- if you push some of those -- that other</p> <p>23 stack away and then you can spread out a little bit</p> <p>24 with that one. Go to 1.02, please, which is</p> <p>25 RC0191. Are you there? Got it?</p>	<p style="text-align: right;">111</p> <p>1 it back. So I -- specific dates, going off what</p> <p>2 this paper says, yes, I was jail --</p> <p>3 Q. Were you --</p> <p>4 A. -- administrator.</p> <p>5 Q. Were you the jail administrator in</p> <p>6 December of 2019?</p> <p>7 A. I believe that was close to the time that</p> <p>8 Kim resigned. I'd have to look at her sheet,</p> <p>9 though.</p> <p>10 Q. All right.</p> <p>11 A. Because when she resigned is when I became</p> <p>12 the jail administrator.</p> <p>13 Q. Would you expect your correctional</p> <p>14 officers to know who the jail administrator is at</p> <p>15 any given time?</p> <p>16 A. Yes.</p> <p>17 Q. Would you be surprised to hear they didn't</p> <p>18 sometimes?</p> <p>19 A. No, it's not surprising. Like I said,</p> <p>20 the -- the up and down of it was me, it was Kim, it</p> <p>21 was both of us, it was none of us, you know, when</p> <p>22 we hired Titus or Dan or now Jaime. So I could see</p> <p>23 where a little confusion would have come in,</p> <p>24 especially years later.</p> <p>25 Q. Who's the next level of supervision up at</p>

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<p style="text-align: right;">112</p> <p>1 the Rolette County Jail in 2020 from a correctional 2 officer?</p> <p>3 A. I -- say that one more time for me.</p> <p>4 Q. Who was the next level up on the chain for 5 corrections at the Rolette County Jail in 2020 from 6 a correctional officer? Who's one notch above 7 that?</p> <p>8 A. So what you're asking is who would have 9 been right under me at that time?</p> <p>10 Q. No. Who would have been right above a 11 correctional off -- a correctional officer in 2020?</p> <p>12 A. I -- I guess I'm having a hard time 13 understanding.</p> <p>14 Q. All right. So --</p> <p>15 A. All the correctional officers were -- were 16 about the same amount of pay, on the same line, and 17 it was the one that had the most experience that 18 would have been considered the shift supervisor at 19 that time.</p> <p>20 Q. Okay. Well, we'll get into that in -- in 21 a minute. This policy, 1.02, includes a statement 22 that the administrator will ensure the day-to-day 23 practices of Rolette County Jail comply with the 24 constitution of North Dakota and the United States, 25 the laws of the State of North Dakota and the</p>	<p style="text-align: right;">114</p> <p>1 Q. All right. And then -- but -- but in 2 terms of when it says -- go to the second one -- 3 "The Administrator will review Administrative 4 policies and procedures of RCJ to ensure compliance 5 with laws, standards, and court rulings and will 6 submit written recommendations for needed changes 7 in administrative policies and procedures at least 8 annually," that is you at this point in time; 9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And keep going on the Bates stamps, the 12 next one is the very next page of Exhibit 91, which 13 is RC0192?</p> <p>14 A. Oh. Yes. Sorry.</p> <p>15 Q. And this is Policy Number 1.03, 16 Administrative and Employee, Organizational 17 Structure. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then this is -- provides -- and, 20 again, it has you as jail administrator and the 21 reevaluation date was December 16 of 2019; right?</p> <p>22 A. Correct.</p> <p>23 Q. And the -- the order of operations here is 24 county commissioners on top; Rolette County Jail 25 administrator next, slash, sheriff; shift</p>
<p style="text-align: right;">113</p> <p>1 United States, and then other standards and 2 guidelines that are in there too; correct?</p> <p>3 A. Correct.</p> <p>4 Q. And in terms of review of administrative 5 policies and procedures, it says -- and, again, 6 we're on RC0191 of -- was it Exhibit 90?</p> <p>7 MS. MORONEY: 91.</p> <p>8 Q. (MR. NOEL CONTINUING) 91. "The 9 administrator will keep him or herself up-to-date 10 on changing laws, standards and court rulings 11 pertaining to administrative practices." 12 Did I read that correctly?</p> <p>13 A. Correct.</p> <p>14 Q. Who was doing that for the Rolette County 15 Jail in 2019?</p> <p>16 A. It would have been myself with the help of 17 my office deputy, Kim Nadeau.</p> <p>18 Q. Is Kim a certified correctional officer in 19 2019 and 2020?</p> <p>20 A. I'd have to go back and look at her 21 personnel file.</p> <p>22 Q. You don't know off the top of your head?</p> <p>23 A. I -- I don't. I -- thinking more on it, I 24 want to say yes, but, again, I'd have to look at 25 her personnel file.</p>	<p style="text-align: right;">115</p> <p>1 supervisor; and then correctional officers at the 2 bottom. True?</p> <p>3 A. Correct.</p> <p>4 Q. Is that an accurate assessment of how 5 things were organized in June of 2020?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay.</p> <p>8 A. We're -- we're reading something from 9 December of '19 and then we skip to 2020, so I'm -- 10 like I'd want to say that one as well, but -- and 11 these -- these can change yearly, so --</p> <p>12 Q. Yep. Well, this one -- this one says at 13 the top that it was effective December 16, 2019. 14 Do you see that?</p> <p>15 A. Effective date 12 -- at the very top 16 there?</p> <p>17 Q. Yeah.</p> <p>18 A. Yes.</p> <p>19 Q. And that -- that wouldn't have changed by 20 the time June 2020 rolled around, would it?</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. And then next I want you to go to 23 the -- the next one is actually an existing exhibit 24 that we have so I shouldn't have had you put those 25 aside quite yet. It's Exhibit 32.</p>

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<p style="text-align: right;">116</p> <p>1 A. You said 32?</p> <p>2 Q. 32. Okay. Exhibit 32 is Policy Number</p> <p>3 3.02 titled Inmates, and the subject is Physical</p> <p>4 Count and Check of Inmates, and the North Dakota</p> <p>5 jail standard referenced is 32; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And if you want to see if that</p> <p>8 matches up, you're more than welcome to do that.</p> <p>9 Are you looking to see if it matches up with --</p> <p>10 A. Correct.</p> <p>11 Q. -- 91? Okay.</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. And Exhibit 91, what you're looking</p> <p>14 at right now, has been produced to us as the manual</p> <p>15 that was in effect at the time Lacey was in the</p> <p>16 facility in June 2020. Do you have any reason to</p> <p>17 quarrel with that?</p> <p>18 A. No.</p> <p>19 Q. So I think this -- you're going to find</p> <p>20 this at RC0222.</p> <p>21 A. 222?</p> <p>22 Q. Yep.</p> <p>23 A. Okay.</p> <p>24 Q. And if you need to get comfortable with</p> <p>25 Exhibit 32 -- well, I'll tell you what, why don't</p>	<p style="text-align: right;">118</p> <p>1 the inmates, we're doing more than simply keeping</p> <p>2 them alive with Policy 3.02?</p> <p>3 A. Can you say that one more time for me? I</p> <p>4 apologize.</p> <p>5 Q. Yeah. The -- the -- the goal -- it looks</p> <p>6 like the primary goal of the policy is to ensure</p> <p>7 the safety and security of the facility and then</p> <p>8 also to ensure the physical and emotional</p> <p>9 well-being of the inmates; correct?</p> <p>10 A. Correct.</p> <p>11 Q. That sounds to me like one of the goals of</p> <p>12 Policy 3.02 is to do more than simply keep the</p> <p>13 inmates alive. Would that be fair to say?</p> <p>14 A. Correct.</p> <p>15 Q. And then we go to -- there's different</p> <p>16 symbols on here. There's a little arrow that says,</p> <p>17 "Correctional Officers and Shift Supervisors shall</p> <p>18 log all inmate behavior that appears out of the</p> <p>19 ordinary."</p> <p>20 Was that one of your expectations of COs</p> <p>21 in June of 2020?</p> <p>22 A. Correct.</p> <p>23 Q. Do you know whether or not this policy,</p> <p>24 Number 3.02, which is on Exhibit 91 at RC0222 -- do</p> <p>25 you know if you changed anything on this version</p>
<p style="text-align: right;">117</p> <p>1 you just refer to -- to RC0222, okay, in</p> <p>2 Exhibit 91?</p> <p>3 A. Okay.</p> <p>4 Q. All right. So this says it's effective</p> <p>5 January 7 of 2020; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And the reevaluation date was January 7 of</p> <p>8 2020 by Jail Administrator Nathan Gustafson;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. So you were the jail administrator on</p> <p>12 January 7 of 2020; correct?</p> <p>13 A. Correct.</p> <p>14 Q. All right. And then this is the policy</p> <p>15 that we talked a little bit about earlier.</p> <p>16 "Physically check all inmates on an hourly basis,</p> <p>17 at irregular intervals." And then the second</p> <p>18 sentence, "Inmate cell checks are necessary to</p> <p>19 ensure the safety and security of the facility, and</p> <p>20 the physical and emotional well-being of the</p> <p>21 inmates."</p> <p>22 Did I read that correctly?</p> <p>23 A. Correct.</p> <p>24 Q. And would you agree with me that by</p> <p>25 ensuring the physical and emotional well-being of</p>	<p style="text-align: right;">119</p> <p>1 from the previous version?</p> <p>2 A. I do not recall.</p> <p>3 Q. Did you have a process when you became</p> <p>4 sheriff to do a comprehensive review of the Rolette</p> <p>5 County Jail Policy and Procedure Manual?</p> <p>6 A. Say that one more time for me, please.</p> <p>7 Q. Yeah. When you -- when you came on as</p> <p>8 sheriff in January -- was it January 1?</p> <p>9 A. Correct.</p> <p>10 Q. After you were sheriff, did you have a</p> <p>11 process where you undertook a comprehensive review</p> <p>12 of the Rolette County Jail Policy and Procedure</p> <p>13 Manual?</p> <p>14 A. Can you -- "comprehensive review," what do</p> <p>15 you mean by that?</p> <p>16 Q. Well, you're ultimately responsible for</p> <p>17 all the policies and procedures of the Rolette</p> <p>18 County Jail; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Did you review the policy manual with an</p> <p>21 eye toward making sure they were all compliant with</p> <p>22 the North Dakota correctional standards?</p> <p>23 A. Yes.</p> <p>24 Q. All right. And, actually, if I recall</p> <p>25 correctly the DOCR indicated that your policy was</p>

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<p style="text-align: right;">120</p> <p>1 okay as written; true?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. All right. Now go to Exhibit 91,</p> <p>4 RC0231. Let me know when you're there.</p> <p>5 A. You said 0231?</p> <p>6 Q. Yes, sir. The Bates stamps at the bottom.</p> <p>7 A. Okay.</p> <p>8 Q. That one is titled Number 3.05, effective</p> <p>9 date January 7, 2020, and it's titled Inmates,</p> <p>10 Required Wear of Uniform; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And this one has you as jail administrator</p> <p>13 and that you reevaluated this standard on January 7</p> <p>14 of 2020; right?</p> <p>15 A. Correct.</p> <p>16 Q. And it says that inmates are required to</p> <p>17 wear their issued Rolette County Jail uniform at</p> <p>18 all times except when showering. Inmates must</p> <p>19 where tops and bottoms at all times. Plain white</p> <p>20 T-shirts may be worn. Any inmate not complying</p> <p>21 with this policy will be subject to disciplinary</p> <p>22 sanctions, which could include but not limited to</p> <p>23 loss of TV privileges or other sanctions deemed</p> <p>24 appropriate by the Rolette County Jail staff.</p> <p>25 Did I get that right?</p>	<p style="text-align: right;">122</p> <p>1 reference. That was actually something that Myles</p> <p>2 Brunelle testified to. Same reaction?</p> <p>3 A. Same.</p> <p>4 MR. GRANT BAKKE: Object to form.</p> <p>5 THE WITNESS: Same reaction with anybody</p> <p>6 that -- because they're -- they've been given the</p> <p>7 policy book to read over and we review some</p> <p>8 policies at some meetings too.</p> <p>9 Q. (MR. NOEL CONTINUING) All right.</p> <p>10 A. We'll just pick one and go over that one.</p> <p>11 Q. All right. Any policies you can remember</p> <p>12 paying particular emphasis -- giving particular</p> <p>13 emphasis in your first couple years as sheriff?</p> <p>14 A. I don't recall at this time.</p> <p>15 Q. All right. Take Exhibit 91 now, and are</p> <p>16 you at 271?</p> <p>17 A. Correct.</p> <p>18 Q. All right. This one is Policy Number</p> <p>19 5.01, Chapter: Medical, Subject: Medical Services.</p> <p>20 And it's effective date is January 14 of 2020,</p> <p>21 reevaluated by you, jail administrator, on</p> <p>22 January 14 of 2020; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And the policy states, "The Rolette County</p> <p>25 Jail will provide inmates necessary medical care</p>
<p style="text-align: right;">121</p> <p>1 A. Yes.</p> <p>2 Q. And would you be surprised to learn that</p> <p>3 there was a correctional officer at the facility in</p> <p>4 June of 2020 that was unaware that inmates were</p> <p>5 required to wear pants at the facility?</p> <p>6 A. I --</p> <p>7 MR. GRANT BAKKE: Object to form.</p> <p>8 THE WITNESS: I guess I -- I would be</p> <p>9 unaware of that.</p> <p>10 Q. (MR. NOEL CONTINUING) Would that surprise</p> <p>11 you if you had a correctional officer whose name</p> <p>12 was April Azure who testified under oath that she</p> <p>13 was uncertain whether inmates were required to wear</p> <p>14 pants --</p> <p>15 MR. GRANT BAKKE: Object to --</p> <p>16 Q. (MR. NOEL CONTINUING) -- at the facility?</p> <p>17 MR. GRANT BAKKE: Object to form.</p> <p>18 THE WITNESS: Yeah, I -- it would be</p> <p>19 surprising to me.</p> <p>20 Q. (MR. NOEL CONTINUING) Okay. And then if</p> <p>21 you'd turn next on Exhibit 91 to 0271 through 0273.</p> <p>22 A. 71?</p> <p>23 Q. Yep.</p> <p>24 A. Okay.</p> <p>25 Q. And let me correct the April Azure</p>	<p style="text-align: right;">123</p> <p>1 including physical, mental health, eye care and</p> <p>2 dental care. The cost of such medical care is</p> <p>3 subject to payment by or reimbursement from the</p> <p>4 inmate. Adequate staff, space, equipment, supplies</p> <p>5 and materials must be provided if health care is</p> <p>6 delivered in the correctional facility."</p> <p>7 True?</p> <p>8 A. True.</p> <p>9 Q. And then for the General Information, it</p> <p>10 says, "The Jail Administrator shall designate a</p> <p>11 licensed physician, nurse practitioner, physician's</p> <p>12 assistant, or registered nurse or a county or state</p> <p>13 health authority to be the health care</p> <p>14 administrator."</p> <p>15 Correct?</p> <p>16 A. Correct.</p> <p>17 Q. In 2020, who was the Rolette County Jail's</p> <p>18 health care administrator?</p> <p>19 A. The only health care that I remember is</p> <p>20 our nurse, Lori Sollin. She may have another</p> <p>21 person come, but that's who's been in charge of it</p> <p>22 as long as I can remember.</p> <p>23 Q. All right. Do you know if her title was</p> <p>24 health care administrator?</p> <p>25 A. I do not recall.</p>

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<p style="text-align: right;">124</p> <p>1 Q. And when we -- we talked earlier about</p> <p>2 the -- the funding challenges, but you -- and we</p> <p>3 talked to Lance Anderson yesterday. He recognized</p> <p>4 some of the same challenges for Rolette County --</p> <p>5 A. Right.</p> <p>6 Q. -- but he also testified that a lack of</p> <p>7 funding cannot be an excuse for not complying with</p> <p>8 the jail correctional standards. Do you agree with</p> <p>9 that?</p> <p>10 A. Yeah.</p> <p>11 Q. In other words, if you're going to operate</p> <p>12 a jail, you have to comply with the standards</p> <p>13 regardless of budget?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Now let's go --</p> <p>16 A. Thinking more on that one, I -- half of me</p> <p>17 wants to disagree with that because if -- moving</p> <p>18 from our old jail where we had two correction</p> <p>19 officers/dispatch, two ran the jail at the old one.</p> <p>20 Moving to the new facility, if our budget was only</p> <p>21 going to allow us to have two, we wouldn't be able</p> <p>22 to open the jail -- the new jail. So budgeting</p> <p>23 issues has a factor in there, though. So I -- I</p> <p>24 would disagree a little bit with Mr. Anderson on</p> <p>25 that it doesn't have an effect on following the</p>	<p style="text-align: right;">126</p> <p>1 A. Yes.</p> <p>2 Q. Policy Number 6.32.1, effective date</p> <p>3 February 24 of 2020, and the Chapter is Safety</p> <p>4 Security and the Subject is Mortality Review; true?</p> <p>5 A. Correct.</p> <p>6 Q. And it was reevaluated by you, the jail</p> <p>7 administrator, on February 24, 2020; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Is this the policy that you were following</p> <p>10 in connection with Deposition Exhibit 83, the</p> <p>11 document that we examined earlier today?</p> <p>12 A. Oh, I don't recall.</p> <p>13 Q. All right.</p> <p>14 A. I'm sorry.</p> <p>15 Q. It seems to match up, though, doesn't it?</p> <p>16 A. It --</p> <p>17 Q. Your memo on Exhibit 83 is titled</p> <p>18 Mortality Review; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you told me earlier that you looked --</p> <p>21 that you thought that there was a policy governing</p> <p>22 that review?</p> <p>23 A. Correct.</p> <p>24 Q. And page 357 of Exhibit 91, toward the</p> <p>25 bottom, says Mortality Review/Inmate Death. It</p>
<p style="text-align: right;">125</p> <p>1 rules. If you don't have enough employees, you</p> <p>2 wouldn't be able to follow the rules.</p> <p>3 Q. Okay. Did you ever go to the DOCR and say</p> <p>4 we don't have sufficient staff, manpower to be able</p> <p>5 to comply with the North Dakota standards?</p> <p>6 A. I don't recall. I mean, I've been sheriff</p> <p>7 six years and I've talked to DOCR, you know, at</p> <p>8 least twice every year and they've been available</p> <p>9 for phone calls or whatever. But having that</p> <p>10 specific conversation, I -- right now I don't</p> <p>11 remember.</p> <p>12 Q. All right. I mean, as the Rolette County</p> <p>13 sheriff, you don't want your jail to get shut down</p> <p>14 or temporarily closed; correct?</p> <p>15 A. No.</p> <p>16 Q. Did you ever go to the DOCR and say if we</p> <p>17 don't get more -- more budgeting from the county</p> <p>18 and more help, we're at risk of not being able to</p> <p>19 comply with these rules?</p> <p>20 A. Again, I don't -- I don't remember having</p> <p>21 that exact conversation.</p> <p>22 Q. Fast-forward to Deposition Exhibit 91 and</p> <p>23 it's going to be pages 357 to 359.</p> <p>24 A. Okay.</p> <p>25 Q. So 357, do you see that?</p>	<p style="text-align: right;">127</p> <p>1 says, "Upon the death of an inmate the following</p> <p>2 procedures shall be followed."</p> <p>3 And to me that -- that means it's not</p> <p>4 optional; correct?</p> <p>5 A. Correct.</p> <p>6 Q. It says, "The Mortality review board shall</p> <p>7 review the following: Review any reports,</p> <p>8 information reports, investigation reports, and any</p> <p>9 jail documents relevant to the incident."</p> <p>10 Did I read that correctly?</p> <p>11 A. Correct.</p> <p>12 Q. And it goes on to list a number of other</p> <p>13 things that we're not -- we're not going to go</p> <p>14 through all of them, but you see the -- the things</p> <p>15 they want you to do and they require you do in</p> <p>16 connection with the mortality review?</p> <p>17 A. Correct.</p> <p>18 Q. And if you can, can you tell me what -- in</p> <p>19 connection with your mortality review of the Higdem</p> <p>20 death, can you tell me which of these bullet points</p> <p>21 on the bottom of page 357 and 358 you were able to</p> <p>22 review? In -- in other words, that you did review.</p> <p>23 A. I don't recall.</p> <p>24 Q. Well, read them first before you decide.</p> <p>25 A. Okay. What was your question again? I</p>

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<p style="text-align: right;">128</p> <p>1 apologize.</p> <p>2 Q. Just which of those bullet points -- it</p> <p>3 says, "Mortality review shall review -- "The</p> <p>4 Mortality review board shall review the following,"</p> <p>5 and it goes on to list a number of bullet points,</p> <p>6 and I realize not every case is every one of these</p> <p>7 things available. So I'm not -- I'm not trying to</p> <p>8 go there. I'm just wondering starting with,</p> <p>9 "Review any reports, information reports,</p> <p>10 investigation reports," going down that bullet</p> <p>11 list, what were you able -- what did you review in</p> <p>12 connection with the mortality review?</p> <p>13 A. I do not remember.</p> <p>14 Q. Okay.</p> <p>15 A. I mean, I'm -- I'm sure we -- we went</p> <p>16 through these, but I -- I just don't remember</p> <p>17 exactly which ones without reviewing all the other</p> <p>18 stuff. I -- I don't remember.</p> <p>19 Q. Do you remember when you were doing your</p> <p>20 mortality review if you had any feeling that, jeez,</p> <p>21 we screwed up here?</p> <p>22 A. I don't know if it was -- if I would say</p> <p>23 it like that. There was obvious emotions. It's a</p> <p>24 hard thing to do to call a mother and tell her</p> <p>25 something like that, so there was definitely</p>	<p style="text-align: right;">130</p> <p>1 Q. -- this was a bad way to go?</p> <p>2 A. The -- can you say that one more time?</p> <p>3 Q. Yeah. Well, no. We -- we can move on.</p> <p>4 A. I was just wondering because she was</p> <p>5 laughing there. I didn't know it was funny.</p> <p>6 Q. Oh, okay. Well, if -- if you feel like</p> <p>7 something's bothering you and you need to take a</p> <p>8 break, you can certainly do that.</p> <p>9 A. I'm okay. I was just curious why we were</p> <p>10 giggling when I answered.</p> <p>11 Q. Well, I think -- I think -- you know, I --</p> <p>12 I watched the video and I saw somebody who seemed</p> <p>13 to be in a crisis situation for hours before Myles</p> <p>14 finally went in and looked at her and didn't find a</p> <p>15 pulse. Fair?</p> <p>16 MR. GRANT BAKKE: Objection to form.</p> <p>17 THE WITNESS: That's your -- your opinion,</p> <p>18 I guess.</p> <p>19 Q. (MR. NOEL CONTINUING) What's your</p> <p>20 opinion?</p> <p>21 A. My opinion of the -- the death? Of Myles</p> <p>22 freaking out, as Agent --</p> <p>23 Q. No.</p> <p>24 A. -- Zachmeier said?</p> <p>25 Q. So we're going to -- we're going to be</p>
<p style="text-align: right;">129</p> <p>1 emotions in there, but I -- you know, right now I</p> <p>2 don't remember.</p> <p>3 Q. As sheriff you've got to separate the</p> <p>4 emotions from the work that needs to be done; fair?</p> <p>5 A. Yeah.</p> <p>6 Q. And I'm not saying that's easy.</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Did you -- sometimes -- you know, I</p> <p>9 watched that video and I thought about, like, you</p> <p>10 know, sometimes you see the obituaries where they</p> <p>11 say so-and-so died peacefully, that sort of thing.</p> <p>12 You know what I'm talking about?</p> <p>13 A. Obituaries. Okay.</p> <p>14 Q. Well, have you ever heard the phrase "died</p> <p>15 peacefully," "surrounded by family"?</p> <p>16 A. I'm sure I have. Yeah.</p> <p>17 Q. Okay. Did it appear to you that that's</p> <p>18 what happened with Lacey? Did -- did it appear to</p> <p>19 you from the video that she died peacefully?</p> <p>20 MR. GRANT BAKKE: Object to form.</p> <p>21 THE WITNESS: I don't think any death that</p> <p>22 I've seen or been a part of was ever real peaceful.</p> <p>23 Q. (MR. NOEL CONTINUING) Okay. Could you</p> <p>24 see why Lacey's mom might feel like --</p> <p>25 A. I apologize, I --</p>	<p style="text-align: right;">131</p> <p>1 here late --</p> <p>2 A. Okay.</p> <p>3 Q. -- if we keep struggling with</p> <p>4 communication. Okay?</p> <p>5 A. Okay.</p> <p>6 Q. So did you look -- when you viewed the</p> <p>7 video and you saw Lacey in her cell for the hours</p> <p>8 before Myles went in there and found her without a</p> <p>9 pulse, did you find that that person seemed to be</p> <p>10 in some sort of a crisis?</p> <p>11 MR. GRANT BAKKE: Object to form.</p> <p>12 THE WITNESS: Everybody we have in jail is</p> <p>13 in a crisis.</p> <p>14 Q. (MR. NOEL CONTINUING) Okay. Did she</p> <p>15 stand out as being in a crisis any more than other</p> <p>16 inmates you see on any given day at the facility?</p> <p>17 MR. GRANT BAKKE: Object to form.</p> <p>18 THE WITNESS: We've seen worse. If I'm</p> <p>19 not mistaken, we had one in there that was showing</p> <p>20 more signs than this one.</p> <p>21 Q. (MR. NOEL CONTINUING) Okay. Did she seem</p> <p>22 like she was acting normal to you in the hours</p> <p>23 before Myles found her?</p> <p>24 MR. GRANT BAKKE: Objection. Calls for</p> <p>25 speculation.</p>

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<p>1 THE WITNESS: I said at the beginning</p> <p>2 Rolette County is unique and we talked about money</p> <p>3 and --</p> <p>4 Q. (MR. NOEL CONTINUING) I'm not interested</p> <p>5 in that explanation anymore. What I --</p> <p>6 MR. GRANT BAKKE: He's trying to answer --</p> <p>7 MR. NOEL: No, he's not.</p> <p>8 MR. GRANT BAKKE: -- your question.</p> <p>9 MR. NOEL: We can't keep doing that;</p> <p>10 otherwise, we're going to be here all night.</p> <p>11 MR. GRANT BAKKE: Well, let him answer</p> <p>12 your questions.</p> <p>13 MR. NOEL: He --</p> <p>14 MR. GRANT BAKKE: -- instead of --</p> <p>15 MR. NOEL: We've done -- we've done this</p> <p>16 15 different times. So now I don't want the</p> <p>17 precursor. I just want the answer to the question.</p> <p>18 Q. (MR. NOEL CONTINUING) During those hours</p> <p>19 before Myles found her without a pulse, did she</p> <p>20 appear to be acting out of the ordinary?</p> <p>21 A. Ordinary to other people and us is</p> <p>22 different.</p> <p>23 Q. How about you?</p> <p>24 A. It would be different with me too.</p> <p>25 Q. So she was not acting out of the ordinary</p>	<p>1 MR. NOEL: He's not trying to do anything.</p> <p>2 He's trying to be --</p> <p>3 THE WITNESS: I'm trying --</p> <p>4 MR. NOEL: -- a politician.</p> <p>5 THE WITNESS: -- to answer your questions</p> <p>6 the --</p> <p>7 MR. GRANT BAKKE: I think --</p> <p>8 THE WITNESS: -- best I can.</p> <p>9 MR. GRANT BAKKE: I -- I think you just</p> <p>10 don't like his answers.</p> <p>11 MR. NOEL: I -- I --</p> <p>12 MS. MORONEY: This isn't a press</p> <p>13 conference. This is a deposition.</p> <p>14 MR. GRANT BAKKE: Are you -- are you both</p> <p>15 asking questions now? I mean, what are --</p> <p>16 MR. NOEL: That was -- no, that was just a</p> <p>17 statement. That was just --</p> <p>18 MR. GRANT BAKKE: Right. Yeah. I mean --</p> <p>19 Q. (MR. NOEL CONTINUING) But the bottom line</p> <p>20 is all I want to know is from your -- from your</p> <p>21 perspective, did those few hours before Myles came</p> <p>22 in and found her without a pulse, did she appear to</p> <p>23 be acting out of the ordinary?</p> <p>24 MR. GRANT BAKKE: Object to form.</p> <p>25 Q. (MR. NOEL CONTINUING) And I think you</p>
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<p>1 in your judgment in the hours before Myles saw her</p> <p>2 without a pulse; correct?</p> <p>3 MR. GRANT BAKKE: Object to form.</p> <p>4 THE WITNESS: From the point of booking to</p> <p>5 the point of this, I wasn't there. It's hard to --</p> <p>6 Q. (MR. NOEL CONTINUING) I don't care if you</p> <p>7 were there or not.</p> <p>8 A. Okay.</p> <p>9 Q. Am I being too hard on you here?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. Nope.</p> <p>13 Q. I mean, you're a sheriff.</p> <p>14 A. Correct.</p> <p>15 Q. It's not an easy job.</p> <p>16 A. No.</p> <p>17 Q. All right. If you feel like I'm -- you</p> <p>18 can't handle it, just tell me. Okay?</p> <p>19 MR. GRANT BAKKE: Just because --</p> <p>20 THE WITNESS: Understood.</p> <p>21 MR. GRANT BAKKE: -- you don't like his</p> <p>22 answer --</p> <p>23 MR. NOEL: It's not -- he's not answering.</p> <p>24 It's been going on all day.</p> <p>25 MR. GRANT BAKKE: He's --</p>	<p>1 said for you no, she was not; correct?</p> <p>2 MR. GRANT BAKKE: Object to form.</p> <p>3 THE WITNESS: Yeah. I wasn't there, so</p> <p>4 hindsight watching video, could -- could have did</p> <p>5 things better, but at the time of booking and</p> <p>6 stuff, I trusted my employees to do their jobs.</p> <p>7 Q. (MR. NOEL CONTINUING) I'm not asking you</p> <p>8 about booking. I want to know about the -- the few</p> <p>9 hours -- do you remember seeing the video of -- of</p> <p>10 April changing out her underwear?</p> <p>11 A. Earlier when you asked that, I -- I -- I</p> <p>12 remember some of it, yeah.</p> <p>13 MR. NOEL: All right. I think we better</p> <p>14 take -- let's take ten minutes and we'll get the</p> <p>15 video cued up.</p> <p>16 THE VIDEOGRAPHER: We're off the record at</p> <p>17 12:24 p.m.</p> <p>18 (Recessed at 12:24 p.m. and reconvened at</p> <p>19 12:39 p.m.)</p> <p>20 THE VIDEOGRAPHER: This is the beginning</p> <p>21 of Media Number 4. We are back on the record at</p> <p>22 12:59 [sic] p.m.</p> <p>23 Q. (MR. NOEL CONTINUING) All right. Sheriff</p> <p>24 Gustafson, before we took the break, I was talking</p> <p>25 about the phrase "out of the ordinary." Do you</p>

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<p style="text-align: right;">136</p> <p>1 remember that?</p> <p>2 A. Yes.</p> <p>3 Q. And I chose that phrase because it's found</p> <p>4 in a policy that was in effect at the Rolette</p> <p>5 County Jail in June of 2020 regarding inmate</p> <p>6 observation. And the policy says that correctional</p> <p>7 officers and shift supervisors shall log all inmate</p> <p>8 behavior that appears out of the ordinary. Do you</p> <p>9 remember reading that with me earlier?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Would you expect your correctional</p> <p>12 officers and shift supervisors to be able to use</p> <p>13 their own judgment to decide does this look out of</p> <p>14 the ordinary to me, and if so, I should report on</p> <p>15 it?</p> <p>16 A. I would expect that of them, yes.</p> <p>17 Q. And what we're going to watch here is just</p> <p>18 a -- some video. I'm going to play Exhibit 51 and</p> <p>19 it's going to play from 1 minute -- 1 hour,</p> <p>20 4 seconds in to 1 hour -- 1 hour, 4 minutes in to 1</p> <p>21 hour, 6 minutes in. And according to Zachmeier's</p> <p>22 timeline, this is around 9:15 p.m. So I just want</p> <p>23 you to watch it, Exhibit 51, from 1 hour, 4 minutes</p> <p>24 to 1 hour, 6 minutes.</p> <p>25 (Video played.)</p>	<p style="text-align: right;">138</p> <p>1 MR. GRANT BAKKE: Object to form.</p> <p>2 THE WITNESS: Whether they pushed the</p> <p>3 intercom and told her over the -- the speakers or</p> <p>4 talked to her, yeah.</p> <p>5 Q. (MR. NOEL CONTINUING) Okay. Now, if we</p> <p>6 just move it up one minute, we'll go to -- we're</p> <p>7 going to start Exhibit 51 at 1 hour, 7 minutes in.</p> <p>8 So right now. This is a minute after we just</p> <p>9 stopped.</p> <p>10 (Video played.)</p> <p>11 (Video stopped.)</p> <p>12 Q. (MR. NOEL CONTINUING) So if we pause</p> <p>13 Exhibit 51 at 1 hour, 7 minutes, 24 seconds, can</p> <p>14 you see April Azure has now walked into the cell</p> <p>15 with new -- some new clothes?</p> <p>16 A. That's what it -- yeah. Correct.</p> <p>17 Q. All right. Do you have any idea why --</p> <p>18 how April got word that Lacey needed some new</p> <p>19 clothes?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. We'll keep playing it.</p> <p>22 (Video played.)</p> <p>23 (Video stopped.)</p> <p>24 Q. (MR. NOEL CONTINUING) Now I'm pausing it</p> <p>25 at 1 hour, 8 minutes, 27 seconds. April Azure</p>
<p style="text-align: right;">137</p> <p>1 (Video stopped.)</p> <p>2 Q. (MR. NOEL CONTINUING) All right. Did you</p> <p>3 notice anything with Lacey that seems out of the</p> <p>4 ordinary in that two minutes?</p> <p>5 A. Me personally, not speculating on what the</p> <p>6 COs -- is that what you're asking me?</p> <p>7 Q. Yes.</p> <p>8 A. She appears to be rocking back and forth.</p> <p>9 At one point I thought I saw her wiping dirt off</p> <p>10 her feet. Something with her hair. I don't know</p> <p>11 if she was playing with her hair or pulled it. I</p> <p>12 couldn't really see that part. Rocking back and</p> <p>13 forth, yeah. She's not wearing her flip flops or</p> <p>14 her -- her bottoms.</p> <p>15 Q. Would -- would the -- would the individual</p> <p>16 that we saw for those two minutes, would -- would</p> <p>17 somebody sitting on the ground with no pants on</p> <p>18 pass a cell check at the Rolette County Jail in</p> <p>19 June of 2020?</p> <p>20 A. No. Our policies says they should be</p> <p>21 wearing their -- their bottoms.</p> <p>22 Q. And the policy would dictate that in order</p> <p>23 to do that, you'd have to communicate with her in</p> <p>24 some form or fashion to -- to get the bottoms on;</p> <p>25 correct?</p>	<p style="text-align: right;">139</p> <p>1 testified that her only mission in going into this</p> <p>2 cell was to get Lacey a clean set of clothes. And</p> <p>3 my question to you is can you tell how that process</p> <p>4 seems to be going so far?</p> <p>5 MR. GRANT BAKKE: Object to form.</p> <p>6 Q. (MR. NOEL CONTINUING) By watching that</p> <p>7 minute and a half.</p> <p>8 A. It -- my opinion when she -- when April</p> <p>9 walks in, it almost looks like it agitated Lacey</p> <p>10 more due to she -- she moved around more when the</p> <p>11 CO walked in than when she was by herself. I don't</p> <p>12 know if that's what you were --</p> <p>13 Q. All right.</p> <p>14 A. -- getting at.</p> <p>15 Q. All right. Let's see how the process</p> <p>16 goes. We'll start it up again as 1 hour,</p> <p>17 8 minutes, 27 seconds.</p> <p>18 (Video played.)</p> <p>19 (Video stopped.)</p> <p>20 Q. (MR. NOEL CONTINUING) All right. Now</p> <p>21 we've stopped Exhibit 51 at 1 hour, 11 minutes, 32</p> <p>22 seconds. Did you see April just handed Lacey the</p> <p>23 underwear?</p> <p>24 A. Correct.</p> <p>25 (Video played.)</p>

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<p style="text-align: right;">140</p> <p>1 (Video stopped.)</p> <p>2 Q. (MR. NOEL CONTINUING) And then we stopped</p> <p>3 Exhibit 51 at 1 hour, 11 minutes, 47 seconds. Now</p> <p>4 you see April has the underwear back in her hands;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 (Video played.)</p> <p>8 Q. (MR. NOEL CONTINUING) Does it appear to</p> <p>9 you that April is dealing with somebody right now</p> <p>10 who needs a lot of help?</p> <p>11 MR. GRANT BAKKE: Object to form.</p> <p>12 THE WITNESS: Hard to say with -- without</p> <p>13 audio. The reason I say that is not -- not every</p> <p>14 inmate is cooperative with -- with staff, whether</p> <p>15 they're not talking or not moving, not -- if</p> <p>16 they're told to move to a different area and they</p> <p>17 just sit there and -- so I -- it's hard to say that</p> <p>18 right now.</p> <p>19 (Video stopped.)</p> <p>20 Q. (MR. NOEL CONTINUING) All right. I</p> <p>21 stopped Exhibit 51 at 1 hour, 12 minutes,</p> <p>22 36 seconds. And you hit on an interesting point</p> <p>23 there because April Azure testified that during</p> <p>24 this attempted underwear/clothes change process,</p> <p>25 she couldn't tell if Lacey was actually refusing to</p>	<p style="text-align: right;">142</p> <p>1 that she was dead three hours later?</p> <p>2 MR. GRANT BAKKE: Object to form.</p> <p>3 Q. (MR. NOEL CONTINUING) Then would you have</p> <p>4 an idea as to whether she was refusing to cooperate</p> <p>5 with that process or unable to?</p> <p>6 A. I don't know.</p> <p>7 Q. You don't think she faked her death,</p> <p>8 though; right?</p> <p>9 MR. GRANT BAKKE: Object to form.</p> <p>10 THE WITNESS: No.</p> <p>11 (Video played.)</p> <p>12 (Video stopped.)</p> <p>13 Q. (MR. NOEL CONTINUING) All right. If we</p> <p>14 stop Exhibit 51 at 1 hour, 13 seconds -- 13</p> <p>15 minutes, 41 seconds, do you see now we've got her</p> <p>16 up on her feet, Lacey?</p> <p>17 A. Correct.</p> <p>18 Q. And April testified that she wasn't sure</p> <p>19 whether Lacey at this point in time was refusing to</p> <p>20 stand up or needed help standing up. Can you tell</p> <p>21 from the video?</p> <p>22 A. I cannot.</p> <p>23 MR. GRANT BAKKE: Object to form.</p> <p>24 Q. (MR. NOEL CONTINUING) How about if you</p> <p>25 knew that she was dead three hours later? Would</p>
<p style="text-align: right;">141</p> <p>1 assist with that process or if she was simply</p> <p>2 unable to assist with that. Is that consistent</p> <p>3 with what you're observing here?</p> <p>4 MR. GRANT BAKKE: Object to form.</p> <p>5 Q. (MR. NOEL CONTINUING) Can't tell which is</p> <p>6 which?</p> <p>7 MR. GRANT BAKKE: Same objection.</p> <p>8 THE WITNESS: I -- yeah, I -- I don't</p> <p>9 know.</p> <p>10 Q. (MR. NOEL CONTINUING) Do you think April</p> <p>11 would have been in a better position to measure</p> <p>12 whether Lacey was refusing to cooperate with the</p> <p>13 process than you?</p> <p>14 A. I think that's correct.</p> <p>15 (Video played.)</p> <p>16 (Video stopped.)</p> <p>17 Q. (MR. NOEL CONTINUING) And if we stop it</p> <p>18 at 1:13:09, did you see Lacey just went down to the</p> <p>19 ground?</p> <p>20 A. Correct.</p> <p>21 Q. Were you able to determine if -- if she</p> <p>22 did that on purpose or if she was just unable to</p> <p>23 stand?</p> <p>24 A. I'm not able to tell that from here.</p> <p>25 Q. How about if you knew as a matter of fact</p>	<p style="text-align: right;">143</p> <p>1 that help you make a determination?</p> <p>2 MR. GRANT BAKKE: Same objection.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 (Video played.)</p> <p>5 (Video stopped.)</p> <p>6 Q. (MR. NOEL CONTINUING) Okay. Now,</p> <p>7 April -- at 1 hour, 14 minutes, 13 seconds April</p> <p>8 has picked up the policy-required pants; right?</p> <p>9 A. Correct.</p> <p>10 (Video played.)</p> <p>11 Q. (MR. NOEL CONTINUING) Okay. Now -- oh,</p> <p>12 great. I did that. I just want to get to when she</p> <p>13 walks out of the cell.</p> <p>14 (Video stopped.)</p> <p>15 Q. (MR. NOEL CONTINUING) All right. And</p> <p>16 then on Exhibit 51 at 1 hour, 14 minutes, 48</p> <p>17 seconds in, April has now walked out of the cell;</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And the pants still aren't on; right?</p> <p>21 A. Correct.</p> <p>22 Q. If Lacey was uncooperative with the --</p> <p>23 with the process of getting dressed with</p> <p>24 correctional staff, would you expect there to be an</p> <p>25 incident report on that?</p>

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<p style="text-align: right;">144</p> <p>1 A. Sorry. Can you say that one more time?</p> <p>2 Q. Would you expect there to be an incident</p> <p>3 report if April -- if Lacey was being uncooperative</p> <p>4 with jail staff in terms of getting -- getting the</p> <p>5 pants on?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. I would think we'd get an incident report.</p> <p>9 Q. I'm sorry. And from your correctional</p> <p>10 officer certification training and experience,</p> <p>11 would you leave an individual who seems -- who's in</p> <p>12 Lacey's condition alone in that cell for the next</p> <p>13 two and a half hours or so without physically</p> <p>14 checking on her?</p> <p>15 MR. GRANT BAKKE: Objection. Calls for</p> <p>16 speculation.</p> <p>17 THE WITNESS: No.</p> <p>18 Q. (MR. NOEL CONTINUING) And you understand</p> <p>19 that that's exactly what Agent Zachmeier concluded</p> <p>20 happened; correct?</p> <p>21 MR. GRANT BAKKE: Object to form.</p> <p>22 THE WITNESS: I believe that was what was</p> <p>23 in his report.</p> <p>24 Q. (MR. NOEL CONTINUING) All right. Do you</p> <p>25 view -- do you view that as a failure on the part</p>	<p style="text-align: right;">146</p> <p>1 watch Exhibit 58. All right. This is Exhibit 58,</p> <p>2 and I have paused it at 58 minutes, 3 seconds in.</p> <p>3 And if we just watch it for a little bit, I think</p> <p>4 we're going to see Dixie Gladue bring Lacey up the</p> <p>5 stairs and put her into B-201. Okay?</p> <p>6 A. Okay.</p> <p>7 (Video played.)</p> <p>8 (Video stopped.)</p> <p>9 Q. (MR. NOEL CONTINUING) All right. So if</p> <p>10 we pause Exhibit 58 at 58 minutes, 27 seconds,</p> <p>11 Lacey's in B-201 and Dixie's about to head down the</p> <p>12 stairs; fair?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know if -- if -- do you know if</p> <p>15 Lacey was on any -- like a lockdown this shift at</p> <p>16 all or not?</p> <p>17 A. It appeared when Dixie was leaving -- if</p> <p>18 you want to rewind it, it appears she gives the</p> <p>19 door a pull and it didn't open.</p> <p>20 Q. Right. And --</p> <p>21 A. I thought that's what I saw but --</p> <p>22 Q. You did. You did. And --</p> <p>23 A. Okay.</p> <p>24 Q. And that -- because that unit, we've been</p> <p>25 told, is not typically locked; correct?</p>
<p style="text-align: right;">145</p> <p>1 of your correctional staff?</p> <p>2 MR. GRANT BAKKE: Object to form.</p> <p>3 THE WITNESS: Do I view -- do -- say</p> <p>4 that -- sorry.</p> <p>5 Q. (MR. NOEL CONTINUING) Yeah. The -- the</p> <p>6 Zachmeier affidavit says when Brunelle entered the</p> <p>7 cell at around 12:20 a.m., that was the first</p> <p>8 physical check of Lacey Higdem since 9:24 p.m., 2</p> <p>9 hours and 36 minutes after CO April Azure exited</p> <p>10 the cell after attempting to assist Lacey Higdem</p> <p>11 with getting dressed. And my question is is</p> <p>12 allowing Lacey to be not physically checked for 2</p> <p>13 hours and 36 minutes a failure on the part of your</p> <p>14 correctional staff?</p> <p>15 MR. GRANT BAKKE: Object to form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 Q. (MR. NOEL CONTINUING) Now, during that</p> <p>18 change clothes -- attempt to change clothes,</p> <p>19 whatever you want to call it, was there anything on</p> <p>20 that -- that video between -- in the interaction</p> <p>21 with Lacey in April that seemed to indicate to you</p> <p>22 Lacey's acting out of the ordinary?</p> <p>23 A. I -- I don't know. I've never seen or</p> <p>24 dealt with Lacey before.</p> <p>25 Q. Okay. All right. Now we're going to</p>	<p style="text-align: right;">147</p> <p>1 A. The A pod through D pod -- and this is B</p> <p>2 pod -- they have the ability to lock either the top</p> <p>3 or bottom floor. A pod and D pod have specific</p> <p>4 cells. These are bunk cells. So we have used it</p> <p>5 for lockdown purposes. The holding cells at this</p> <p>6 time had two in them, so I believe that's why she</p> <p>7 was upstairs.</p> <p>8 Q. All right. Do you know if she was</p> <p>9 classified as being on lockdown?</p> <p>10 A. I don't recall.</p> <p>11 Q. Okay. And as we sit here and look at</p> <p>12 58 at 57:57, there's a mattress and some linens on</p> <p>13 the ground there; right?</p> <p>14 A. Correct. What looks like some kind of</p> <p>15 paper.</p> <p>16 Q. Yeah. It's -- and my question</p> <p>17 specifically about the mattress and the linens, is</p> <p>18 that unusual for there to be -- to be a mattress up</p> <p>19 there on the mezzanine level?</p> <p>20 A. The -- the reason behind that is the TV is</p> <p>21 out of sight -- oops, sorry -- bolted on the wall</p> <p>22 so it's up high, so it's not uncommon for anybody</p> <p>23 in A pod through D pod to lay up on the mezzanine</p> <p>24 and look more straight at the TV than up all the</p> <p>25 time.</p>

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<p style="text-align: right;">148</p> <p>1 Q. Okay. Was that permissible by facility</p> <p>2 rules for the inmates?</p> <p>3 A. I don't remember at that time. Since</p> <p>4 then, I know we -- no mats are allowed outside</p> <p>5 the -- the dorms --</p> <p>6 Q. Got it.</p> <p>7 A. -- or the cells.</p> <p>8 Q. All right. Let's keep playing it.</p> <p>9 Actually we've got to go to a different one. We've</p> <p>10 got to go to Exhibit 59.</p> <p>11 (Video played.)</p> <p>12 (Video stopped.)</p> <p>13 Q. (MR. NOEL CONTINUING) All right. I've</p> <p>14 stopped Exhibit 59 at 50 minutes, 45 seconds in.</p> <p>15 And you see we have one other inmate on the</p> <p>16 mezzanine and another one on her way up the stairs.</p> <p>17 A. Brianna Mayers [sic] and I can't tell on</p> <p>18 the one up the stairs.</p> <p>19 Q. All right. So Brianna Mayers is the one</p> <p>20 standing right at the door here?</p> <p>21 A. I believe so.</p> <p>22 Q. All right. Do you see the -- do you see</p> <p>23 the picture of the -- the black cat affixed to the</p> <p>24 outside of B-201?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">150</p> <p>1 MR. NOEL: We're at 50 minutes, 45 seconds</p> <p>2 on 59.</p> <p>3 Q. (MR. NOEL CONTINUING) And, Sheriff</p> <p>4 Gustafson, I don't want to belabor this point for</p> <p>5 too long, but I -- I do want to try to get it</p> <p>6 squared away. Like you're not telling me that it's</p> <p>7 okay for the inmates to have some stuff affixed to</p> <p>8 the windows of B-201 as long as you're still able</p> <p>9 to see through it. Is that what you're telling me</p> <p>10 or is it against the rules to have anything affixed</p> <p>11 to the glass outside B-201?</p> <p>12 A. I --</p> <p>13 MR. GRANT BAKKE: Objection. Asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: Yeah, I don't recall.</p> <p>16 Q. (MR. NOEL CONTINUING) And as we're</p> <p>17 watching this, if you can identify any of the other</p> <p>18 female inmates, don't even -- just do it for me.</p> <p>19 Okay? Don't wait for me to ask you. Like if this</p> <p>20 person comes up the stairs and you can tell me</p> <p>21 that's so-and-so, just say it. Okay?</p> <p>22 A. Okay.</p> <p>23 Q. So we'll start Exhibit 59 at 50 minutes,</p> <p>24 45 seconds.</p> <p>25 (Video played.)</p>
<p style="text-align: right;">149</p> <p>1 Q. Do you know what that's all about?</p> <p>2 A. I do not. I didn't notice that before.</p> <p>3 Q. Is it permissible by facility rule for</p> <p>4 things to be affixed to the outside of that housing</p> <p>5 unit?</p> <p>6 A. I don't recall. I know they -- they've --</p> <p>7 they've hung pictures up in the cells and on the</p> <p>8 wall down by the phone and stuff and by the door,</p> <p>9 but I don't recall about the glass.</p> <p>10 Q. All right. I mean, isn't the idea of the</p> <p>11 glass that you can see through it?</p> <p>12 A. Correct.</p> <p>13 Q. And in my experience, it's usually against</p> <p>14 the rules to put stuff up that covers the glass in</p> <p>15 correctional facilities. Is that similar for</p> <p>16 Rolette County?</p> <p>17 A. It'd be similar. I guess my thought is</p> <p>18 you can see below and above it and there's multiple</p> <p>19 other places, but --</p> <p>20 THE REPORTER: Did you touch it?</p> <p>21 MR. NOEL: I did touch it. All right.</p> <p>22 One second. I touched it ever so slight. She told</p> <p>23 me not to do that. Don't touch it.</p> <p>24 MR. GRANT BAKKE: And, Andy, I can't see.</p> <p>25 What minute are we at?</p>	<p style="text-align: right;">151</p> <p>1 THE WITNESS: I don't think I've ever seen</p> <p>2 this before.</p> <p>3 (Video stopped.)</p> <p>4 Q. (MR. NOEL CONTINUING) And we stop it at</p> <p>5 51 minutes, 23 seconds in. Fair to say that Lacey</p> <p>6 seems to have these three female inmates' attention</p> <p>7 at this point?</p> <p>8 A. I would --</p> <p>9 MR. GRANT BAKKE: Objection. Calls for</p> <p>10 speculation.</p> <p>11 THE WITNESS: I would assume so. They're</p> <p>12 all standing at the window looking in.</p> <p>13 Q. (MR. NOEL CONTINUING) And we know there's</p> <p>14 no one else in there with her; correct?</p> <p>15 A. I believe you're correct.</p> <p>16 Q. All right.</p> <p>17 (Video played.)</p> <p>18 THE WITNESS: When -- just to clarify,</p> <p>19 when -- like there's no COs is what I was getting</p> <p>20 at. I knew there was no inmates with her, but --</p> <p>21 okay.</p> <p>22 (Video stopped.)</p> <p>23 Q. (MR. NOEL CONTINUING) Let's pause it at</p> <p>24 fifty -- Exhibit 59 at 52 minutes, 16 seconds. In</p> <p>25 June of 2020, is it permissible by facility rule to</p>

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<p style="text-align: right;">152</p> <p>1 have inmates who are assigned to the lower level</p> <p>2 housing unit to be up on B-201?</p> <p>3 A. I -- I think so, but I don't recall</p> <p>4 specifically if -- if -- if there was a -- I'm</p> <p>5 trying to clarify to answer more on that one. If</p> <p>6 both top and bottom are locked down, no. If -- if</p> <p>7 there was a problem with one or two inmates and --</p> <p>8 and they had to go to their dorms, the rest</p> <p>9 necessarily didn't have to be locked down. They</p> <p>10 could have been. But if they're out in the -- I</p> <p>11 don't even know what to call it, the opening --</p> <p>12 the --</p> <p>13 Q. The common area?</p> <p>14 A. The common area. Thank you. If they're</p> <p>15 out there, it -- it -- they have the access to kind</p> <p>16 of move around. If -- if they were at the window</p> <p>17 and -- I don't want to say tormenting, but if they</p> <p>18 were trying to keep things riled up, everybody</p> <p>19 would be locked down essentially.</p> <p>20 Q. All right.</p> <p>21 A. So I -- it's hard to answer that question.</p> <p>22 It -- every scenario's just a little different, but</p> <p>23 in this case I believe the girls were free to move</p> <p>24 around. They weren't locked down on the bottom, if</p> <p>25 I remember right.</p>	<p style="text-align: right;">154</p> <p>1 Q. (MR. NOEL CONTINUING) And I assume you</p> <p>2 don't know who the individual is at 52:16 up</p> <p>3 against the glass to the right?</p> <p>4 A. Either one of those two --</p> <p>5 Q. Okay.</p> <p>6 A. -- inmates, the one at the stairs or the</p> <p>7 one at the window. The one at the door is still</p> <p>8 Brianna Mayers.</p> <p>9 Q. And we're going to move forward a bit on</p> <p>10 Exhibit 59.</p> <p>11 (Video played.)</p> <p>12 (Video stopped.)</p> <p>13 Q. (MR. NOEL CONTINUING) Okay. So if we</p> <p>14 stop Exhibit 59 now at 57 minutes, 30 seconds in,</p> <p>15 now we've got four inmates huddled up outside</p> <p>16 Lacey's unit; correct?</p> <p>17 A. Correct.</p> <p>18 (Video played.)</p> <p>19 Q. (MR. NOEL CONTINUING) There's -- there's</p> <p>20 a new one -- a new inmate up there. She's right</p> <p>21 near that black cat. Do you know who that is?</p> <p>22 A. I can't tell at this time.</p> <p>23 Q. Yeah. It's kind of hard to see her face</p> <p>24 so far. Just keep an eye out for that.</p> <p>25 From this part of the video, does it seem</p>
<p style="text-align: right;">153</p> <p>1 Q. Did you ever learn that -- that some of</p> <p>2 the female inmates in that B unit were expressing</p> <p>3 concerns to correctional staff about Lacey's</p> <p>4 well-being during this shift?</p> <p>5 A. I believe Agent Zachmeier brought it to my</p> <p>6 attention. I believe that's who brought it to my</p> <p>7 attention.</p> <p>8 Q. And would you expect Myles, April, Troll,</p> <p>9 whoever was working, to take those concerns</p> <p>10 seriously?</p> <p>11 A. I expect all my staff to take those</p> <p>12 concerns serious.</p> <p>13 Q. And do you expect the staff not to get</p> <p>14 numb to inmate complaints? Inmates complain a lot</p> <p>15 about a lot of stuff; correct?</p> <p>16 A. Fair.</p> <p>17 Q. Sometimes it's valid, sometimes it's not;</p> <p>18 right?</p> <p>19 A. Right.</p> <p>20 Q. And would you expect your correctional</p> <p>21 staff not to become numb to inmate complaints</p> <p>22 because then you risk ignoring something that might</p> <p>23 be serious?</p> <p>24 MR. GRANT BAKKE: Object to form.</p> <p>25 THE WITNESS: I could agree with that.</p>	<p style="text-align: right;">155</p> <p>1 like the inmates are in a pretty good position to</p> <p>2 observe what's going on with Lacey?</p> <p>3 MR. GRANT BAKKE: Objection. Calls for</p> <p>4 speculation.</p> <p>5 THE WITNESS: I can't see where Lacey's</p> <p>6 at, but they're still all looking in about at the</p> <p>7 same direction, it appears.</p> <p>8 Q. (MR. NOEL CONTINUING) All right.</p> <p>9 A. I think the only place you wouldn't be</p> <p>10 able to see from here would be into the bathroom.</p> <p>11 (Video stopped.)</p> <p>12 Q. (MR. NOEL CONTINUING) And then if we stop</p> <p>13 Exhibit 59 at 59 minutes, 9 seconds, do you see the</p> <p>14 inmate on the far right has taken that picture of a</p> <p>15 black cat and moved it over to the adjacent window?</p> <p>16 A. Correct.</p> <p>17 Q. Have you ever heard of this black cat deal</p> <p>18 before?</p> <p>19 A. I have not.</p> <p>20 Q. Okay.</p> <p>21 A. I don't ever -- I don't remember watching</p> <p>22 this video.</p> <p>23 Q. All right.</p> <p>24 (Video played.)</p> <p>25 Q. (MR. NOEL CONTINUING) Is there a -- is</p>

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<p style="text-align: right;">156</p> <p>1 there a picture of a black cat that just resides at</p> <p>2 the Rolette County Jail that you know of?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. Sorry. Are you talking about this</p> <p>6 specific picture or a picture on somebody's desk of</p> <p>7 a cat or --</p> <p>8 (Video stopped.)</p> <p>9 Q. (MR. NOEL CONTINUING) Yeah. I'm -- it</p> <p>10 was not necessarily --</p> <p>11 A. Okay.</p> <p>12 Q. -- a question --</p> <p>13 A. Sorry.</p> <p>14 Q. -- that needed to be answered.</p> <p>15 A. I just kind of didn't understand your --</p> <p>16 Q. Yeah. It just -- it struck me as odd, and</p> <p>17 I'm wondering if you have any explanation for why</p> <p>18 that would even be up there?</p> <p>19 A. This specific one?</p> <p>20 Q. Yeah.</p> <p>21 A. So inmates will ask for coloring sheets or</p> <p>22 whatever. I'm assuming that was provided by dis --</p> <p>23 corrections to -- to have them color.</p> <p>24 Q. Like activity time, something like that?</p> <p>25 A. Something to stay busy. Correct.</p>	<p style="text-align: right;">158</p> <p>1 all for that.</p> <p>2 A. That one it appears Brianna's either</p> <p>3 smiling or laughing.</p> <p>4 Q. Yep. And did you have an opportunity to</p> <p>5 listen to or read the summaries of the inmate</p> <p>6 interviews of the females that Zachmeier completed?</p> <p>7 A. I don't recall.</p> <p>8 Q. Okay.</p> <p>9 A. If -- it would have been in Zachmeier's</p> <p>10 report?</p> <p>11 Q. Yes.</p> <p>12 A. I'm -- I'm assuming I have. I just don't</p> <p>13 recall right now.</p> <p>14 Q. There was -- there was -- one of the</p> <p>15 statements from one of the inmates indicated that</p> <p>16 they told correctional staff that Lacey needed to</p> <p>17 go to the hospital and correctional staff wasn't</p> <p>18 doing anything. Do you remember that portion of</p> <p>19 it?</p> <p>20 MR. GRANT BAKKE: Object to form.</p> <p>21 THE WITNESS: I do not.</p> <p>22 Q. (MR. NOEL CONTINUING) If another inmate</p> <p>23 told correctional staff that they felt one of their</p> <p>24 fellow inmates needed to go to the hospital, would</p> <p>25 you expect the CO to at least follow up on that?</p>
<p style="text-align: right;">157</p> <p>1 (Video played.)</p> <p>2 THE WITNESS: I still don't recognize</p> <p>3 those three females.</p> <p>4 Q. (MR. NOEL CONTINUING) Understood.</p> <p>5 (Video stopped.)</p> <p>6 Q. (MR. NOEL CONTINUING) All right. Now</p> <p>7 I've paused Exhibit 59 at 1 hour, 20 seconds, and I</p> <p>8 want you to focus on the -- the female who is still</p> <p>9 at the B-201 door. Okay?</p> <p>10 (Video played.)</p> <p>11 THE WITNESS: Hold on. Or am I focusing</p> <p>12 on this one or am I focusing on Brianna.</p> <p>13 Q. (MR. NOEL CONTINUING) Not Brianna.</p> <p>14 A. Okay.</p> <p>15 Q. Yeah.</p> <p>16 A. Okay.</p> <p>17 (Video stopped.)</p> <p>18 Q. (MR. NOEL CONTINUING) Pausing at 1 hour,</p> <p>19 58 seconds. Does it look to you like that female</p> <p>20 is holding her hands in the shape of a cross at</p> <p>21 Lacey's window?</p> <p>22 A. It appears so.</p> <p>23 (Video played.)</p> <p>24 (Video stopped.)</p> <p>25 Q. (MR. NOEL CONTINUING) All right. That's</p>	<p style="text-align: right;">159</p> <p>1 MR. GRANT BAKKE: Object to form.</p> <p>2 THE WITNESS: I would.</p> <p>3 Q. (MR. NOEL CONTINUING) And what about</p> <p>4 the -- the buttons? Like if we look at B-201 here</p> <p>5 on Exhibit 59, where would an inmate inside that</p> <p>6 unit press the button?</p> <p>7 A. Right by the door handle, there's one on</p> <p>8 the outside. I believe it's right on the other</p> <p>9 side of that one, I believe.</p> <p>10 Q. All right.</p> <p>11 A. And it'll be that little silver box.</p> <p>12 Q. Okay. And that -- that makes, according</p> <p>13 to the COs, like a loud sound in the control room</p> <p>14 and it's intended to only be used in an emergency;</p> <p>15 fair?</p> <p>16 A. A loud sound -- oh, okay.</p> <p>17 Q. It's --</p> <p>18 A. Yeah. It says Intercom B-201. It'll</p> <p>19 flash on our control. I wouldn't say it's overly</p> <p>20 loud, but it gets your attention. Yeah.</p> <p>21 Q. All right. And the -- the rule is it's</p> <p>22 only supposed to be used in an emergency; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Did you get any information from</p> <p>25 correctional officers when you -- in those first</p>

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<p style="text-align: right;">160</p> <p>1 couple years you were sheriff that inmates were</p> <p>2 overusing the -- the panic button?</p> <p>3 A. The emergency button, yes. Daily.</p> <p>4 Q. All right. And -- and as the -- as the</p> <p>5 jail administrator, what do you think can be done</p> <p>6 about that? What are the options?</p> <p>7 A. I believe one of the things we did was</p> <p>8 I -- I went to each pod and told each pod at that</p> <p>9 exact moment when the staff was having issues with</p> <p>10 every pod pushing the button, some would push it</p> <p>11 and run away. So I went to every cell and</p> <p>12 explained that it was for emergency use. I thought</p> <p>13 we -- when they were in the booking process, I</p> <p>14 thought that was implemented too. I don't remember</p> <p>15 if it was verbally or if it was on paper. I can't</p> <p>16 remember that part.</p> <p>17 Q. All right. Did any correctional officer</p> <p>18 who was working on that June 3 and 4 shift</p> <p>19 communicate to you that they didn't respond to an</p> <p>20 emergency button because it was being overused that</p> <p>21 day? Anything like that?</p> <p>22 A. I don't recall.</p> <p>23 Q. And let's just watch --</p> <p>24 A. I know something else that they would do</p> <p>25 on top of what I said earlier with the -- with the</p>	<p style="text-align: right;">162</p> <p>1 the CO on the floor, it'd be face-to-face or -- or</p> <p>2 verbal.</p> <p>3 Q. (MR. NOEL CONTINUING) Right. Right.</p> <p>4 Okay.</p> <p>5 MR. NOEL: All right. Why don't we take</p> <p>6 another break and then we'll move on to the next</p> <p>7 thing.</p> <p>8 THE VIDEOGRAPHER: We are off the record</p> <p>9 at 1:22 p.m.</p> <p>10 (Recessed at 1:22 p.m. and reconvened at</p> <p>11 1:35 p.m.)</p> <p>12 THE VIDEOGRAPHER: This is the beginning</p> <p>13 of Media Number 5. We are back on the record at</p> <p>14 1:35 p.m.</p> <p>15 Q. (MR. NOEL CONTINUING) All right.</p> <p>16 Sheriff, we found some of the names of other</p> <p>17 inmates were in that -- that were in that lower</p> <p>18 level housing unit, and I just want to ask you if</p> <p>19 you recognize any of the names. You already talked</p> <p>20 about Stephanie Myer -- was it Stephanie Myers?</p> <p>21 A. No.</p> <p>22 Q. Brianna.</p> <p>23 A. Yes.</p> <p>24 Q. Brianna Mayer. Okay. And there was a</p> <p>25 Stephanie Myers. Do you recognize that name?</p>
<p style="text-align: right;">161</p> <p>1 button is that whoever's in the control room would</p> <p>2 push it and say, What's your emergency or is there</p> <p>3 an emergency, and they would say, No, just checking</p> <p>4 to see what time it is, or something around those.</p> <p>5 It's only used for emergencies.</p> <p>6 Q. Right.</p> <p>7 A. The control would reiterate it over the</p> <p>8 intercom, but turnover rate in a jail, too, just</p> <p>9 when we felt all the inmates knew it, we'd get new</p> <p>10 ones in and we'd be right back to pushing the</p> <p>11 button.</p> <p>12 Q. Right. Right. And the expectation of a</p> <p>13 correctional officer in 2020 would have been if</p> <p>14 the -- if the emergency button sounds, you respond</p> <p>15 to it?</p> <p>16 A. Correct.</p> <p>17 Q. You have to respond to it in order for you</p> <p>18 to be able to determine whether it's a real</p> <p>19 emergency or not?</p> <p>20 A. Correct.</p> <p>21 MR. GRANT BAKKE: Object to form.</p> <p>22 THE WITNESS: And there'd be several</p> <p>23 different ways to answer that button, whether it</p> <p>24 was control or the CO on the floor with a -- if it</p> <p>25 was control, it'd be with the intercom. If it was</p>	<p style="text-align: right;">163</p> <p>1 A. No.</p> <p>2 Q. How about Makishia Hunt?</p> <p>3 A. Makishia Hunt. No.</p> <p>4 Q. Joanna LaVallie?</p> <p>5 A. That one maybe, but I'm not sure.</p> <p>6 Q. All right. And Tara Willard?</p> <p>7 A. That one sounds familiar. Tara. Tara.</p> <p>8 I -- I believe that one sounds familiar, but if --</p> <p>9 if I had five pictures up, I don't know if I'd be</p> <p>10 able to pick her out.</p> <p>11 Q. That's what I was going to ask you. Could</p> <p>12 you match up the people with those names at all?</p> <p>13 A. I don't -- I don't know.</p> <p>14 Q. All right. We're not going to try.</p> <p>15 A. Okay.</p> <p>16 Q. Tell me a little bit about your</p> <p>17 background, if you would, please. Where you went</p> <p>18 to high school, post-high school education, where</p> <p>19 you grew up.</p> <p>20 A. Graduated from St. John High School.</p> <p>21 Q. What year?</p> <p>22 A. 2000. Attended Bottineau -- I suppose</p> <p>23 Bottineau -- Minot State University out of</p> <p>24 Bottineau. Played two years of college basketball</p> <p>25 there, graduated with an associate of arts. In</p>

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<p>164</p> <p>1 between some of those times I attended Mayville, I</p> <p>2 attended Turtle Mountain Community College. I</p> <p>3 played a year of football at Thief River Falls.</p> <p>4 After graduation -- or after a couple</p> <p>5 years of college, jeez, I was coaching football</p> <p>6 in -- as a teacher's aide at St. John's school. I</p> <p>7 was coaching basketball, girls and boys. At one</p> <p>8 point I became a unit director of the Boys and</p> <p>9 Girls Club in St. John, and I believe that was</p> <p>10 '03-'04. '05 I bought two businesses -- I believe</p> <p>11 I was 24 years old -- a restaurant and a bar in</p> <p>12 St. John. Did that for a couple years.</p> <p>13 At 2007 I attended Lake Region College in</p> <p>14 Devils Lake and got my law enforcement certificate.</p> <p>15 I believe I was hired second or third day of the</p> <p>16 academy with Rolla Police Department.</p> <p>17 Q. As -- as a patrol officer?</p> <p>18 A. Correct. I worked weekends when I wasn't</p> <p>19 in the class, and then I was in class Monday</p> <p>20 through Friday from 6 a.m. to 5 or 6.</p> <p>21 After graduation, I was still working for</p> <p>22 Rolla Police Department. I got offered a job at</p> <p>23 the credit union in St. John as a loan officer, so</p> <p>24 I -- I took a -- I think I worked for Rolla PD for</p> <p>25 six months and then I -- I became that full-time</p>	<p>166</p> <p>1 second stint was a -- a deputy. I was part-time</p> <p>2 for them I think my second stint. Eventually I got</p> <p>3 hired -- I was still with Rolla PD full-time and</p> <p>4 the sheriff before me hired me as the chief deputy,</p> <p>5 so I was doing both for a little while.</p> <p>6 Q. Okay.</p> <p>7 A. I say "a little while," about a month to</p> <p>8 two months I did both jobs before resigning from</p> <p>9 my -- from my chief deputy job and staying with</p> <p>10 Rolla PD.</p> <p>11 Q. All right. And how long were you chief of</p> <p>12 police of Rolla city?</p> <p>13 A. I -- I want to say at least two years, but</p> <p>14 I -- it was longer than a year, but it wasn't three</p> <p>15 years, I know, because I ended up becoming sheriff.</p> <p>16 Q. All right. As a -- as an outsider, I</p> <p>17 don't -- is Rolla city different than Rolla?</p> <p>18 A. No. That's Rolla city.</p> <p>19 Q. Okay. Gotcha. And when you came on --</p> <p>20 well, in terms of the Rolette County Sheriff's</p> <p>21 Department, entry level deputy, I've heard of some</p> <p>22 counties that -- that have people do corrections</p> <p>23 first and then they put them out on patrol as a</p> <p>24 deputy. Is that similar to what happened in Rolla</p> <p>25 county in 2020 or is it different?</p>
<p>165</p> <p>1 re -- not resource officer, sorry -- loan officer,</p> <p>2 and I did that for a year before going back to</p> <p>3 Rolla PD. And with Rolla PD I was working with</p> <p>4 Rolette County Sheriff's Office also before</p> <p>5 transferring to them full-time.</p> <p>6 Q. Let me ask you, how long were you with the</p> <p>7 Rolla PD?</p> <p>8 A. My first stint was roughly six months.</p> <p>9 Q. Right. Yep. I got that.</p> <p>10 A. And then I took a -- a couple-month break</p> <p>11 from them. I -- I would have to look at my -- my</p> <p>12 file from Rolla PD. And I'm not sure what year I</p> <p>13 came back to Rolla PD. I want to say it might have</p> <p>14 been '14 or so that -- that I came back full-time.</p> <p>15 I worked for Rolette County for six months to a</p> <p>16 year full-time. So there was -- there was going</p> <p>17 back and forth a little bit. Eventually I ended up</p> <p>18 becoming chief of police of Rolla city, and then I</p> <p>19 ran for sheriff and got elected in 2019.</p> <p>20 Q. And the election would have been in</p> <p>21 November of 2018?</p> <p>22 A. Correct.</p> <p>23 Q. When you were with Rolette County, were</p> <p>24 you a deputy?</p> <p>25 A. My first stint -- I believe my first and</p>	<p>167</p> <p>1 A. In Rolette County?</p> <p>2 Q. Yeah. I'm sorry.</p> <p>3 A. Yes and no. The reason I say that is</p> <p>4 there's been many correction officers that feel</p> <p>5 their next promotion is becoming a deputy, so there</p> <p>6 has been times where other sheriffs or -- or I --</p> <p>7 I'll speak on just myself, but we've hired some</p> <p>8 correctional officers when they've applied for some</p> <p>9 deputy jobs. That's not the case every time,</p> <p>10 though. If -- if I have a correction officer that</p> <p>11 is not certified in law enforcement and then I have</p> <p>12 somebody else that's certified, sending somebody to</p> <p>13 the academy for three months, three and a half</p> <p>14 months and -- and not having them here is a -- it's</p> <p>15 a --</p> <p>16 Q. Puts them at a dis --</p> <p>17 A. -- it's an issue, so --</p> <p>18 Q. Right. And clearly throughout your tenure</p> <p>19 at Rolette County, the -- the -- the county</p> <p>20 deputies earn more than the correctional officers</p> <p>21 entry level, let's say coming into the job?</p> <p>22 A. Yeah. I don't know exactly by how much.</p> <p>23 It -- the last time I looked, it wasn't that huge</p> <p>24 of a difference, but when you say entry level, you</p> <p>25 have non-certifieds that make X amount, you have</p>

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<p style="text-align: right;">168</p> <p>1 certifieds that make X amount and then the time</p> <p>2 frame they come in, but it -- it was close. That</p> <p>3 wasn't always the case.</p> <p>4 Q. Generally viewed as more favorable to move</p> <p>5 from a CO to a deputy than from a deputy to a CO?</p> <p>6 A. Some might look at going from a deputy to</p> <p>7 a CO would be a step down. Some might look at it</p> <p>8 that way. Some have done it. I guess it's all on</p> <p>9 who --</p> <p>10 Q. Sure.</p> <p>11 A. -- you ask on that one.</p> <p>12 Q. What -- what made you decide to run for</p> <p>13 sheriff? I realize there might be a lot of stuff,</p> <p>14 but what -- what -- what made you decide that this</p> <p>15 was something you were going to try to tackle?</p> <p>16 A. At the beginning I talked about the</p> <p>17 complaints that came to me or the issues that I</p> <p>18 should run were 99 percent -- I -- I would like to</p> <p>19 say a hundred but I'm -- maybe somebody said</p> <p>20 something else at one point, but 99 percent of it</p> <p>21 had to do with crime. Home burglaries, vandalism,</p> <p>22 thefts of cars -- we have a lot of theft of cars in</p> <p>23 our area -- pursuits, things like that.</p> <p>24 Q. Street crime?</p> <p>25 A. Correct. The other thing that was brought</p>	<p style="text-align: right;">170</p> <p>1 penitentiary, I have guys that I transport</p> <p>2 personally. I just transported two yesterday to</p> <p>3 the Bismarck pen, and they tell me on the way down,</p> <p>4 When I get out, I'm never coming back to your</p> <p>5 county again. Why is that? Well, you guys aren't</p> <p>6 messing around anymore. Harder to get product up</p> <p>7 to our -- to the -- to our area. Harder to</p> <p>8 distribute.</p> <p>9 And I take that as a huge win when I have</p> <p>10 criminals going to the pen for distributing</p> <p>11 fentanyl or methamphetamine and they say they're</p> <p>12 never coming back. I -- that's a huge pat on my</p> <p>13 back I feel.</p> <p>14 Q. Sure.</p> <p>15 A. And it's -- it's all due to the staff I</p> <p>16 have.</p> <p>17 Q. Okay.</p> <p>18 A. But it was things like that that I wanted</p> <p>19 to make a huge difference in our community. My --</p> <p>20 my son walks -- and my wife live in the community</p> <p>21 and just didn't want it to be as bad as it was.</p> <p>22 Q. Understood. And as sheriff, you're</p> <p>23 ultimately accountable to the voters; right?</p> <p>24 A. Correct.</p> <p>25 Q. Is it a two-year term?</p>
<p style="text-align: right;">169</p> <p>1 a lot was the -- the drugs in our community.</p> <p>2 They -- they thought some more -- some stronger</p> <p>3 actions should be taken and I -- I agreed with</p> <p>4 that. That's why I decided to run. I actually --</p> <p>5 just in all honesty, I thought our community</p> <p>6 deserved better than where we were before.</p> <p>7 Q. Do you feel like you've made some inroads</p> <p>8 into the drug issue as we sit here today as opposed</p> <p>9 to when you started?</p> <p>10 A. When you say "inroads," can you explain?</p> <p>11 Q. Did you feel like you've -- you've made it</p> <p>12 a little better, improved it?</p> <p>13 A. Yeah. To elaborate more --</p> <p>14 Q. Yeah. What sorts of things?</p> <p>15 A. -- we've sent more people to the</p> <p>16 penitentiary in my term as sheriff than we did in</p> <p>17 the past. Our calls for service, strictly speaking</p> <p>18 of the deputies, have gone up significantly each</p> <p>19 year. Example, I just had a city council meeting</p> <p>20 on Wednesday before I came, and one of my deputies</p> <p>21 from January 1 to I believe it was April 8 or 9 had</p> <p>22 436 calls for service where the lowest one had 36.</p> <p>23 So that's like -- that -- and I'm the one at 36,</p> <p>24 but the -- significant calls that they've gone to.</p> <p>25 When I talk about sending people to the</p>	<p style="text-align: right;">171</p> <p>1 A. Four.</p> <p>2 Q. Four.</p> <p>3 Do you ever remember a constituent coming</p> <p>4 up to you and talking about, you know, improving</p> <p>5 conditions for those who are locked up, or is it</p> <p>6 primary lock 'em up?</p> <p>7 A. I'm sorry. You're talking about people in</p> <p>8 my community, what they --</p> <p>9 Q. Yeah. Yeah.</p> <p>10 A. -- tell me back?</p> <p>11 Q. Yeah.</p> <p>12 A. Yeah, it's -- if anything, it's the system</p> <p>13 is broke. As far as court goes, they -- a lot of</p> <p>14 the citizens feel they -- the people should have</p> <p>15 got more time, but the -- kind of the consensus of</p> <p>16 the -- the citizens in Rolette County is clean up</p> <p>17 the streets, lock 'em up, so to speak.</p> <p>18 Q. Okay. And if we get into resources --</p> <p>19 well, let's -- let's skip over that.</p> <p>20 Let me ask you about Kim Nadeau a little</p> <p>21 bit. Earlier you mentioned to me that she decided</p> <p>22 she didn't want to do the jail administrator job</p> <p>23 anymore?</p> <p>24 A. Correct.</p> <p>25 Q. Did she communicate a reason why?</p>

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<p style="text-align: right;">172</p> <p>1 A. I don't recall a hundred percent, but I</p> <p>2 want to say it had to do with pay and the workload</p> <p>3 that she had already had. In our county -- and</p> <p>4 just to elaborate a little more, in our county it's</p> <p>5 not uncommon to wear multiple hats. I know at one</p> <p>6 point the sheriff before me, the commissioners told</p> <p>7 Kim that they wanted her to be the jail</p> <p>8 administrator to make sure things were -- were</p> <p>9 operating correctly. And then when I came aboard,</p> <p>10 she -- she really didn't like that position, if I</p> <p>11 remember right.</p> <p>12 Q. All right.</p> <p>13 A. And it was due to the -- the workload of</p> <p>14 her -- her current position and --</p> <p>15 Q. Do you know how much --</p> <p>16 A. -- then the additional --</p> <p>17 Q. -- more pay she got along with that title,</p> <p>18 jail administrator?</p> <p>19 A. I -- I might be mixing these up. It was</p> <p>20 either -- it was anywhere from \$300 to 700 a month,</p> <p>21 but I -- I'm not exactly sure.</p> <p>22 Q. All right.</p> <p>23 A. I know it was substantially less than what</p> <p>24 we pay the jail administrator now.</p> <p>25 Q. And who is the jail administrator now?</p>	<p style="text-align: right;">174</p> <p>1 A. And I might -- again, a lot of numbers, a</p> <p>2 lot of dates and a lot of time. I -- I believe it</p> <p>3 was 48,000 is what he was getting, but it was up to</p> <p>4 another amount, and I believe the commissioners</p> <p>5 wanted to start him at that because after six</p> <p>6 months, that would have been the incentive to give</p> <p>7 the -- the raise to the max. Let's say the max was</p> <p>8 52, they -- I think they started him at 48 and --</p> <p>9 or was it 60? See, I'm -- I'm -- I'm not a hundred</p> <p>10 percent on the -- I know it wasn't 65,000.</p> <p>11 Q. All right.</p> <p>12 A. And it wasn't 30,000. It was right in --</p> <p>13 Q. Right.</p> <p>14 A. -- there somewhere.</p> <p>15 Q. And did you have -- did you have to go to</p> <p>16 the commissioners and -- and ask them to give you</p> <p>17 more money to hire Kraft? Let -- let's start over.</p> <p>18 So before Kraft, it was either you or</p> <p>19 Titus --</p> <p>20 A. Correct.</p> <p>21 Q. -- it was you; right?</p> <p>22 A. Okay. Yep.</p> <p>23 Q. And then Titus was before that?</p> <p>24 A. Correct.</p> <p>25 Q. And let's just take after Lacey. Okay.</p>
<p style="text-align: right;">173</p> <p>1 A. Currently it's Jaime Metcalfe.</p> <p>2 Q. And was it Dan Kraft before that?</p> <p>3 A. Correct.</p> <p>4 Q. And do you remember how much Kraft made --</p> <p>5 A. Well --</p> <p>6 Q. -- when he came on?</p> <p>7 A. -- actually, sorry, to back up, I -- I</p> <p>8 believe it would have been me, to answer your</p> <p>9 question correctly.</p> <p>10 Q. Yep.</p> <p>11 A. And Dan Kraft left our facility for a</p> <p>12 different opportunity and we had to fill that</p> <p>13 position, so I believe I filled it until Jaime got</p> <p>14 hired.</p> <p>15 Q. All right. And Dan -- Dan was</p> <p>16 something -- someone you didn't want to lose; fair</p> <p>17 to say?</p> <p>18 A. Oh, a hundred percent fair to say.</p> <p>19 Very --</p> <p>20 Q. That's what it sounded like.</p> <p>21 A. Very -- very good person. The staff</p> <p>22 seemed to like him. Things -- he had a nice rhythm</p> <p>23 to his movements.</p> <p>24 Q. Do you know how much he was paid while he</p> <p>25 was jail administrator, what his salary was?</p>	<p style="text-align: right;">175</p> <p>1 After the Lacey Higdem incident, did you ever go to</p> <p>2 the commissioners and say, I need more money</p> <p>3 because we need to hire a full-time dedicated jail</p> <p>4 administrator?</p> <p>5 A. I believe I went to the commissioners and</p> <p>6 I asked for not only the jail administrator portion</p> <p>7 and salary but also that fourth correction officer.</p> <p>8 Q. Right. And that was -- that was after</p> <p>9 Lacey; correct?</p> <p>10 A. Correct.</p> <p>11 Q. Now, before Lacey was there in June of</p> <p>12 2020, did you ever go to the commissioners and say,</p> <p>13 I need more money because we need to hire a</p> <p>14 full-time dedicated jail administrator?</p> <p>15 A. I believe I answered that one earlier.</p> <p>16 I -- I believe when I took office, January 1, my</p> <p>17 first meeting I believe I was asking for assistance</p> <p>18 in -- in bettering both the deputies and</p> <p>19 correction.</p> <p>20 Q. All right. And do you remember anything</p> <p>21 specific with regard to the desire to have a jail</p> <p>22 administrator -- a full-time dedicated position for</p> <p>23 that before Lacey?</p> <p>24 A. Before Lacey, we wanted one, but I -- I</p> <p>25 don't recall. I don't remember that one. Sorry.</p>

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<p style="text-align: right;">176</p> <p>1 Q. And fair to say that Kraft would have been</p> <p>2 making a lot more than Kim Nadeau for being the</p> <p>3 jail administrator?</p> <p>4 A. Yeah.</p> <p>5 Q. We talked a little bit earlier about an</p> <p>6 ongoing investigation, BCI, DOCR, after Lacey's</p> <p>7 death, and my question for you is did you ever have</p> <p>8 the sense that you were free of those reins to talk</p> <p>9 to your jail staff about the -- the Higdem</p> <p>10 incident?</p> <p>11 A. Did I ever feel like I was free to talk to</p> <p>12 my staff?</p> <p>13 Q. Yeah. There was a period of time where</p> <p>14 you -- you had the impression that you weren't</p> <p>15 supposed to talk to folks about Lacey's --</p> <p>16 A. While the investigation was going on.</p> <p>17 Q. Okay. And after the investigation was</p> <p>18 over, did you feel like you were free to talk to</p> <p>19 the jail staff about the Higdem incident?</p> <p>20 A. I -- I guess to kind of answer that one,</p> <p>21 I -- I don't -- I didn't know if it was over or not</p> <p>22 still yet to this day.</p> <p>23 Q. Okay.</p> <p>24 A. I guess I didn't -- I don't feel free to</p> <p>25 talk about it.</p>	<p style="text-align: right;">178</p> <p>1 staff, and -- and that ranged from corrections all</p> <p>2 the way through the department heads. Anybody --</p> <p>3 even -- well, I guess I should say all my employees</p> <p>4 because even people that weren't there may have</p> <p>5 felt certain ways. So stuff was provided, but I --</p> <p>6 I haven't sat in on those when people say they want</p> <p>7 to talk to somebody.</p> <p>8 Q. All right.</p> <p>9 A. I think they'll be more comfortable if I'm</p> <p>10 not in there, so to speak.</p> <p>11 Q. There was some testimony from Myles about</p> <p>12 this sort of counseling, debriefing thing happening</p> <p>13 the same day as the -- as the resignation process</p> <p>14 for him and April. Does that help ring a bell?</p> <p>15 A. No.</p> <p>16 Q. When -- when do you think you -- are you</p> <p>17 waiting for this civil case to be done before you</p> <p>18 feel comfortable talking to your jail staff about</p> <p>19 the Higdem incident?</p> <p>20 A. I would feel a lot more comfortable if --</p> <p>21 if I was instructed that you're okay to -- to do a</p> <p>22 training or talk about this.</p> <p>23 Q. Right.</p> <p>24 A. I would feel more comfortable then.</p> <p>25 Q. And that goes not only toward, well, what</p>
<p style="text-align: right;">177</p> <p>1 Q. Could it -- could you see how someone</p> <p>2 would think it could be used as a -- as a teaching</p> <p>3 moment? I mean, you've -- you've agreed with some</p> <p>4 of the -- the DOCR findings here. You've heard of</p> <p>5 those kind of things, right, where we use -- we use</p> <p>6 one incident as a teaching --</p> <p>7 A. Correct.</p> <p>8 Q. -- moment?</p> <p>9 A. Yeah.</p> <p>10 MR. GRANT BAKKE: Object to form.</p> <p>11 Q. (MR. NOEL CONTINUING) Have you ever used</p> <p>12 the -- the Higdem incident as a teaching moment for</p> <p>13 your folks at the jail?</p> <p>14 MR. GRANT BAKKE: Object to form.</p> <p>15 THE WITNESS: I don't feel that we've</p> <p>16 really felt like we could talk about it yet.</p> <p>17 Q. (MR. NOEL CONTINUING) All right. Was</p> <p>18 there like a -- were you part of a -- and I -- I'm</p> <p>19 not suggesting that you're not being straight with</p> <p>20 me there. I just remember one thing where people</p> <p>21 were talking about sort of a debriefing, like there</p> <p>22 was counseling offered for the jail staff for the</p> <p>23 trauma associated with it. Do you remember a</p> <p>24 meeting like that?</p> <p>25 A. I -- I remember providing information for</p>	<p style="text-align: right;">179</p> <p>1 the heck happened, but also with regard to how can</p> <p>2 we improve, if at all, looking at what happened to</p> <p>3 Lacey?</p> <p>4 A. Okay.</p> <p>5 Q. Is that fair?</p> <p>6 A. Yeah.</p> <p>7 Q. All right. All right. Take a look at</p> <p>8 Exhibit 29, please. We'll get you back digging in</p> <p>9 the pile.</p> <p>10 THE WITNESS: I can touch these wires now?</p> <p>11 THE REPORTER: Mm-hmm.</p> <p>12 THE WITNESS: Did you say 29?</p> <p>13 Q. (MR. NOEL CONTINUING) 29.</p> <p>14 A. 29.</p> <p>15 MR. NOEL: Yep. And why don't we do this.</p> <p>16 Why don't you -- why don't you take five minutes,</p> <p>17 we'll take a stretch break, and you can look over</p> <p>18 29, and then we'll come back and I'll ask you some</p> <p>19 questions about it. Okay?</p> <p>20 MR. GRANT BAKKE: Well, Andy -- and I</p> <p>21 didn't bring it up the first time, but I think he's</p> <p>22 entitled to review it on the record. I mean, he</p> <p>23 can't have homework over the breaks, so to speak.</p> <p>24 MR. NOEL: Okay.</p> <p>25 MR. GRANT BAKKE: So could we just leave</p>

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<p style="text-align: right;">180</p> <p>1 it on the record while he reviews it?</p> <p>2 MR. NOEL: Yeah.</p> <p>3 MR. GRANT BAKKE: Okay.</p> <p>4 MR. NOEL: And we're still on?</p> <p>5 THE REPORTER: Yep.</p> <p>6 Q. (MR. NOEL CONTINUING) Okay. If it helps,</p> <p>7 Sheriff, I'm going to be asking you about</p> <p>8 Exhibit 29, page 9 of 23 and page 14 and that's it.</p> <p>9 A. So you don't want me to read the whole</p> <p>10 thing? You just want me to read page 9 and 14?</p> <p>11 Q. You read whatever you need to feel</p> <p>12 comfortable. I'm just telling you I'm going to</p> <p>13 talk you about Inmate Observation and Intoxication</p> <p>14 Management.</p> <p>15 A. Okay.</p> <p>16 Q. All right. So -- and when we were in your</p> <p>17 background, I forgot to ask you, do you have any</p> <p>18 military service?</p> <p>19 A. No.</p> <p>20 Q. So Exhibit 29 is an inspection that --</p> <p>21 cover page is dated October 24 of 2019; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And it has facility administrator as</p> <p>24 Kimberly Nadeau; correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">182</p> <p>1 indicated policy was not followed. RCLEC policy</p> <p>2 6.22 and procedures do not demonstrate compliance."</p> <p>3 Do you remember anything about the video</p> <p>4 that the inspectors were shown?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. Do you know the subject of the</p> <p>7 video? Did it have to do with 15-minute checks,</p> <p>8 logs, hourly checks?</p> <p>9 A. I don't recall.</p> <p>10 Q. And the first thing that the DOCR has --</p> <p>11 and it looks like this was an inspection done by</p> <p>12 Anderson and Werlinger; correct?</p> <p>13 A. I believe so. Yeah.</p> <p>14 Q. That's on the first page.</p> <p>15 A. Yep.</p> <p>16 Q. They say that the correctional facility</p> <p>17 inspectors found that the facility procedures do</p> <p>18 not comply with the policy. Essentially that means</p> <p>19 what's happening on the floor is inconsistent with</p> <p>20 what's written down on paper; correct?</p> <p>21 A. Correct.</p> <p>22 Q. What did they communicate to you in that</p> <p>23 regard in terms of what was -- what was happening</p> <p>24 that was different?</p> <p>25 A. Without looking back on any of the notes</p>
<p style="text-align: right;">181</p> <p>1 Q. And that's different than what your</p> <p>2 policies say. The policies from that time say that</p> <p>3 you were the facility administrator; correct?</p> <p>4 A. I would have to go back and look at that</p> <p>5 and compare it, but --</p> <p>6 Q. Anyway, go to page 9 of 30.</p> <p>7 A. Okay.</p> <p>8 Q. That's the inmate observation standard?</p> <p>9 A. 32?</p> <p>10 Q. Yes. Now, at this point in time, you are</p> <p>11 clearly the sheriff; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And the DOCR has identified that the jail</p> <p>14 is noncompliant with Standard 32 for inmate</p> <p>15 observation; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Was this communicated -- was this finding</p> <p>18 communicated to you?</p> <p>19 A. Yes. I would have been part of the --</p> <p>20 when I was sheriff, I would have been part of the</p> <p>21 closeout at the end.</p> <p>22 Q. All right. And I'm curious about the --</p> <p>23 the last little subparagraph there where it says,</p> <p>24 "Correctional facility inspectors were provided</p> <p>25 with documentation and video of an incident that</p>	<p style="text-align: right;">183</p> <p>1 or documents they provided, I -- I don't remember.</p> <p>2 Q. All right. If you'd just read that</p> <p>3 Observation section to yourself that's on page 9 of</p> <p>4 23 of Exhibit 29 -- just read that to yourself and</p> <p>5 tell me when you're done and see if that jogs your</p> <p>6 memory.</p> <p>7 A. No.</p> <p>8 Q. Okay. And at least today you know that</p> <p>9 the Rolette County Jail was noncompliant on</p> <p>10 Standard 32 in 2018 as well; correct? The one we</p> <p>11 talked about earlier?</p> <p>12 A. The 2018?</p> <p>13 Q. The 2018 inspection. Do you remember</p> <p>14 going over that? I can show it to you again real</p> <p>15 quick.</p> <p>16 A. Please.</p> <p>17 Q. It's -- I think it's 81. So, yeah,</p> <p>18 Exhibit 81 and it'll be on page 12 of 30.</p> <p>19 A. Okay. Okay. Standard 32 in December of</p> <p>20 '18 was noncompliant as well as '19. Okay.</p> <p>21 Q. All right. You'd agree with that?</p> <p>22 A. I would agree with that, yes.</p> <p>23 Q. That's what -- that's what the inspections</p> <p>24 say.</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">184</p> <p>1 Q. Is there anything in the Observations</p> <p>2 section for Standard 32 on Exhibit 29 that you have</p> <p>3 a hard time understanding?</p> <p>4 A. I'm -- I'm sorry. I was looking at two</p> <p>5 different documents.</p> <p>6 Q. Okay. Yeah. Go back to 29.</p> <p>7 A. Put 81 away?</p> <p>8 Q. Yeah.</p> <p>9 A. Okay. Back on 29 --</p> <p>10 Q. Back on 29.</p> <p>11 A. -- Standard 32?</p> <p>12 Q. Correct. And the Observations section,</p> <p>13 that first long paragraph, all I'm asking is you</p> <p>14 read it to yourself. Does it make sense to you?</p> <p>15 A. The way it's written, yeah, it doesn't</p> <p>16 remind me of anything --</p> <p>17 Q. All right.</p> <p>18 A. -- specific.</p> <p>19 Q. And then staying on Exhibit 29 --</p> <p>20 A. Page 14?</p> <p>21 Q. -- page 14, and on this inspection they</p> <p>22 had you as noncompliant with Standard 59 which is</p> <p>23 Intoxication Management and Social Detoxification;</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">186</p> <p>1 I -- I don't know if that's what you were getting</p> <p>2 at. Sorry.</p> <p>3 Q. (MR. NOEL CONTINUING) Well, did you --</p> <p>4 Zach -- the DOCR and Zachmeier relayed essentially</p> <p>5 that Lacey should have been on 15-minute watches at</p> <p>6 some point during her course at the Rolette County</p> <p>7 Jail. Fair assessment?</p> <p>8 MR. GRANT BAKKE: Object to form. Calls</p> <p>9 for speculation.</p> <p>10 THE WITNESS: In -- in their reports</p> <p>11 that's what they have down, yes.</p> <p>12 Q. (MR. NOEL CONTINUING) All right. And do</p> <p>13 you have any quarrel with the fact that at some</p> <p>14 point during her stay at the Rolette County Jail,</p> <p>15 given your review of the incident, that she should</p> <p>16 have been put on 15-minute watches at some point in</p> <p>17 time?</p> <p>18 MR. GRANT BAKKE: Object to form.</p> <p>19 Q. (MR. NOEL CONTINUING) I'm not asking you</p> <p>20 to identify the time.</p> <p>21 MR. GRANT BAKKE: Object to form.</p> <p>22 THE WITNESS: I -- do I feel my -- I'm --</p> <p>23 Q. (MR. NOEL CONTINUING) Yeah.</p> <p>24 A. You're getting me confused with are you</p> <p>25 asking me or are you asking if my correction</p>
<p style="text-align: right;">185</p> <p>1 Q. Just take a minute and read the</p> <p>2 Observation to yourself there on page 14 of 23 --</p> <p>3 A. Yeah.</p> <p>4 Q. -- Standard 59.</p> <p>5 A. Okay.</p> <p>6 Q. Looks to me like this one on this occasion</p> <p>7 was primarily aimed at the need for getting folks</p> <p>8 medically cleared in certain situations; correct?</p> <p>9 A. Yep. At -- at this time it appears we</p> <p>10 didn't have a blood alcohol concentration rate in</p> <p>11 our policy, and I believe it is at a .30 now.</p> <p>12 Q. All right.</p> <p>13 A. But that was, yeah, noncompliant because</p> <p>14 we didn't have that in our policy.</p> <p>15 Q. Would a CO have understood in June of 2020</p> <p>16 that regardless of whether or not an inmate came in</p> <p>17 with a medical clearance, if they're exhibiting</p> <p>18 signs or symptoms of a serious mental problem or</p> <p>19 physical problem, that we should take steps to --</p> <p>20 to watch them more closely?</p> <p>21 MR. GRANT BAKKE: Object to form.</p> <p>22 THE WITNESS: That's a hard one. When</p> <p>23 they've come back from a facility such as a</p> <p>24 hospital or an ambulance, they're trained in it</p> <p>25 more than we are. None of my staff is doctors.</p>	<p style="text-align: right;">187</p> <p>1 officers --</p> <p>2 Q. I'm asking -- so given your correctional</p> <p>3 experience, your position as the sheriff and your</p> <p>4 review of this incident, do you agree with the BCI</p> <p>5 and the DOCR that Lacey should have been on</p> <p>6 15-minute watches at some point during her</p> <p>7 admission to the facility?</p> <p>8 MR. GRANT BAKKE: Object to form. Calls</p> <p>9 for speculation.</p> <p>10 THE WITNESS: Hindsight 20/20, yes. In</p> <p>11 the moment, I -- I -- I trust my staff to make</p> <p>12 those decisions.</p> <p>13 Q. (MR. NOEL CONTINUING) Right. And -- and</p> <p>14 with -- with your position, I'm -- I'm primarily</p> <p>15 asking about hindsight, and I understand your</p> <p>16 answer to be that -- that you agree with the</p> <p>17 assessment of the DOCR and the BCI that at some</p> <p>18 point she should have been put on the 15-minute?</p> <p>19 MR. GRANT BAKKE: Objection.</p> <p>20 Mischaracterization. Asked and answered.</p> <p>21 Q. (MR. NOEL CONTINUING) Is that fair?</p> <p>22 A. Oh, I'm sorry. I thought you were telling</p> <p>23 me something, not asking me something.</p> <p>24 Q. No.</p> <p>25 A. I'm sorry. I -- I didn't think you were</p>

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<p style="text-align: right;">188</p> <p>1 asking me a question. It -- at the moment I</p> <p>2 trusted my staff to -- to do their assessment and</p> <p>3 determine what would need to be done. After the</p> <p>4 fact, reading BCI and DOCR's reports, if that's the</p> <p>5 best way to call them, it -- a person could agree</p> <p>6 with DOCR and BCI.</p> <p>7 Q. Would that person include you?</p> <p>8 A. I -- I could, yeah.</p> <p>9 Q. All right. And how about your general</p> <p>10 experience with Brunelle and Azure as correctional</p> <p>11 officers before the Lacey admission? Were they</p> <p>12 good, average, poor performers?</p> <p>13 A. Before this incident, I -- I thought they</p> <p>14 were good employees.</p> <p>15 Q. Do you remember bringing anything</p> <p>16 specifically to either one of their attention in</p> <p>17 terms of this is something that you need to get</p> <p>18 better at, Officer Brunelle or Officer Azure?</p> <p>19 A. I don't recall.</p> <p>20 Q. Were you aware of that inappropriate</p> <p>21 relationship that they were involved in, as April</p> <p>22 called it, while they were working at the jail?</p> <p>23 A. Not till I was aware of the video.</p> <p>24 Q. Okay. So Myles testified that that was a</p> <p>25 one-time thing. April testified that they were in</p>	<p style="text-align: right;">190</p> <p>1 Should be in that stack right over there to your</p> <p>2 left. 3-0.</p> <p>3 A. I'm at 29, 31, 28, 27, 26.</p> <p>4 Q. Oh, okay.</p> <p>5 A. Well, it might be right behind -- there we</p> <p>6 go.</p> <p>7 Q. Okay.</p> <p>8 A. Perfect. This is -- okay.</p> <p>9 Q. Thank you. Exhibit 30 is a September</p> <p>10 monthly report to Joseph Joyce from Lance Anderson,</p> <p>11 and if you turn to the second page, you can see at</p> <p>12 the top of the second page there's a reference to</p> <p>13 the Rolette County Jail annual inspection. Do you</p> <p>14 see that?</p> <p>15 A. Correct.</p> <p>16 Q. What Mr. Anderson says there is the --</p> <p>17 that this facility had a number of noncompliant</p> <p>18 issues and continues to be a work in progress. It</p> <p>19 feels like a culture of doing things to just get by</p> <p>20 or just enough not to have the State give them an</p> <p>21 order of noncompliance. We had some direct</p> <p>22 conversations about this culture and the need to</p> <p>23 not run us in circles but rather to use us to</p> <p>24 better their facility. I believe this was helpful,</p> <p>25 but we will see what things look like next year.</p>
<p style="text-align: right;">189</p> <p>1 the course of a sexual relationship outside the</p> <p>2 workplace at that same time. Do you have any idea</p> <p>3 who's right on that?</p> <p>4 MR. GRANT BAKKE: Object --</p> <p>5 THE WITNESS: No.</p> <p>6 MR. GRANT BAKKE: -- as a</p> <p>7 mischaracterization.</p> <p>8 Q. (MR. NOEL CONTINUING) Was there anything</p> <p>9 going around the rumor mill at the Rolette County</p> <p>10 Jail that Myles and April are -- are together or</p> <p>11 seeing each other that you're aware of?</p> <p>12 A. Not that I was ever aware or brought to my</p> <p>13 attention, no.</p> <p>14 MR. NOEL: All right. Why don't we take a</p> <p>15 quick break and then we'll come back.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 THE VIDEOGRAPHER: We're off the record at</p> <p>18 2:15 p.m.</p> <p>19 (Recessed at 2:15 p.m. and reconvened at</p> <p>20 2:33 p.m.)</p> <p>21 THE VIDEOGRAPHER: This is the beginning</p> <p>22 of Media Number 6. We are back on the record at</p> <p>23 2:33 p.m.</p> <p>24 Q. (MR. NOEL CONTINUING) All right. Sheriff</p> <p>25 Gustafson, can you dig out Exhibit 30, please.</p>	<p style="text-align: right;">191</p> <p>1 Did I read that paragraph correctly?</p> <p>2 A. You did.</p> <p>3 Q. And this was issued on November 4 of 2019.</p> <p>4 Do you have any recollection as sheriff or jail</p> <p>5 administrator of these sorts of concerns being</p> <p>6 relayed to you by the DOCR?</p> <p>7 A. Yes, I remember visiting with them about</p> <p>8 these.</p> <p>9 Q. All right. Can you tell me what -- what</p> <p>10 details you have about the conversation, what they</p> <p>11 told you, your response, that sort of thing?</p> <p>12 A. I don't remember any detail what we --</p> <p>13 they had -- when they come do an inspection,</p> <p>14 they -- through the 108 standards, they'll go</p> <p>15 through and find any that are in noncompliance.</p> <p>16 When they're in noncompliance, then we have time to</p> <p>17 fix the noncompliance. And then if we have not</p> <p>18 fixed them, then the DOCR has the ability to</p> <p>19 make -- make a decision based off our facility</p> <p>20 whether -- if we're not following, they would -- or</p> <p>21 have not fixed them, they could tell us to transfer</p> <p>22 our inmates and close our facility.</p> <p>23 Q. Okay.</p> <p>24 A. So any time they found noncompliance, we</p> <p>25 worked on issues and felt like we fixed them and</p>

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<p style="text-align: right;">192</p> <p>1 were -- had the order to stay open after the</p> <p>2 noncompliances were fixed.</p> <p>3 Q. And at one point in his deposition, Lance</p> <p>4 Anderson testified that it seemed like at times the</p> <p>5 Rolette County Jail was more interested in trying</p> <p>6 to stay open as opposed to actually meeting the</p> <p>7 North Dakota standards. Is that something that you</p> <p>8 would agree with him on?</p> <p>9 A. No.</p> <p>10 MR. GRANT BAKKE: Object to form.</p> <p>11 THE WITNESS: I would -- I feel that when</p> <p>12 they give us noncompliance and we fix them,</p> <p>13 we're -- we're working on bettering the facility</p> <p>14 and staying open, not just enough to get by.</p> <p>15 Q. (MR. NOEL CONTINUING) And -- and this</p> <p>16 culture of doing things just to get by, would you</p> <p>17 disagree with him on that?</p> <p>18 A. I would, and I would like somebody to</p> <p>19 clarify the -- the word "culture" to me. I mean, I</p> <p>20 know you didn't write this, but that's a pretty</p> <p>21 bold word to me. So I -- I -- I'm confused on</p> <p>22 that.</p> <p>23 Q. Yep. Well, he --</p> <p>24 A. Would you like me to keep going?</p> <p>25 Q. I mean -- well, Lance Anderson, he got</p>	<p style="text-align: right;">194</p> <p>1 "culture," I believe it was Bob Werlinger that said</p> <p>2 your guys' culture up here is -- either you don't</p> <p>3 know what you're doing or you're just lazy I think</p> <p>4 is one of the comments that he had made. And the</p> <p>5 way I take culture is -- and, again, our county is</p> <p>6 very unique out of the 53 in our state. Our</p> <p>7 reservation is in the heartbeat of our county which</p> <p>8 is right in the middle. Other reservations are</p> <p>9 pushed off to the side. I don't have any</p> <p>10 jurisdiction on tribal land. And then our county</p> <p>11 is checkerboard where it's -- one approach is</p> <p>12 State, and the next approach is tribal, and so on</p> <p>13 and so forth. It could go every other.</p> <p>14 So when you -- when I hear "culture," I --</p> <p>15 I bring -- it brings -- our area is mostly Native</p> <p>16 Americans, and so I -- I'm confused on that word</p> <p>17 when I hear "culture." I think of Native Americans</p> <p>18 and I don't like it.</p> <p>19 Q. Understand.</p> <p>20 A. Okay.</p> <p>21 Q. And -- and I can't speak for Mr. Anderson,</p> <p>22 but the things that you just told me coming from</p> <p>23 Werlinger, you guys are either lazy or you don't</p> <p>24 know what you're doing, are those things that he</p> <p>25 communicated to you about the Rolette County Jail</p>
<p style="text-align: right;">193</p> <p>1 deposed yesterday --</p> <p>2 A. Okay.</p> <p>3 Q. -- and he talked about it. And, you know,</p> <p>4 it was -- it was his sense that there was some</p> <p>5 resistance to change at times within the -- the</p> <p>6 Rolette County Jail administration. Did -- any</p> <p>7 reason for him to feel that way from your</p> <p>8 perspective?</p> <p>9 A. I can't guess on how somebody feels.</p> <p>10 Sorry.</p> <p>11 Q. Was the Rolette County Jail resistant to</p> <p>12 the changes that the DOCR tried to encourage it to</p> <p>13 make over the years?</p> <p>14 MR. GRANT BAKKE: Object to form.</p> <p>15 THE WITNESS: Since I've been sheriff, I</p> <p>16 don't feel that we've been hard -- I -- how'd you</p> <p>17 state that again? Sorry.</p> <p>18 Q. (MR. NOEL CONTINUING) Let's go on to</p> <p>19 something else. The "culture" word that you talked</p> <p>20 about.</p> <p>21 A. Okay.</p> <p>22 Q. Who sets the culture of the -- the -- an</p> <p>23 organization typically?</p> <p>24 A. I -- I guess I'm still just confused on</p> <p>25 the "culture" word. The way I take that word,</p>	<p style="text-align: right;">195</p> <p>1 operation?</p> <p>2 A. I believe he communicated it to myself and</p> <p>3 Kim Nadeau.</p> <p>4 Q. All right. Do you know when?</p> <p>5 A. (Shakes head.)</p> <p>6 Q. Was it more than once?</p> <p>7 A. I don't recall. I -- I remember it being</p> <p>8 said and the look on Kim's face. It only needed to</p> <p>9 be once.</p> <p>10 Q. And did Kim push back against that</p> <p>11 accusation?</p> <p>12 A. No. The reason why is DOCR holds the</p> <p>13 keys, so you -- if they tell you something, you</p> <p>14 can't really argue against them.</p> <p>15 Q. What specifically was Werlinger talking</p> <p>16 about when he said you guys are either lazy or you</p> <p>17 don't know what you're doing?</p> <p>18 A. I don't know. He never followed up with</p> <p>19 anything other than that remark.</p> <p>20 Q. Was -- did it have to do with coming into</p> <p>21 compliance with things that you weren't compliant</p> <p>22 with?</p> <p>23 MR. GRANT BAKKE: Objection. Asked and</p> <p>24 answered.</p> <p>25 THE WITNESS: I don't know.</p>

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<p style="text-align: right;">196</p> <p>1 Q. (MR. NOEL CONTINUING) So I see what</p> <p>2 you're saying about the word "culture," and what</p> <p>3 I'm wondering is do you have a different -- do you</p> <p>4 have a different way of kind of talking about the</p> <p>5 tone of a particular organization? Is it run</p> <p>6 professionally, is there accountability, those</p> <p>7 types of things. To me that means culture of an</p> <p>8 organization. Have you ever heard "culture" used</p> <p>9 in that regard?</p> <p>10 A. No.</p> <p>11 Q. And then they write, "We had some direct</p> <p>12 conversations about this culture and the need to</p> <p>13 not run us in circles but rather to use us to</p> <p>14 better their facility."</p> <p>15 Do you remember -- is -- is the direct</p> <p>16 conversation consistent with what you're thinking</p> <p>17 with Werlinger saying you guys are either lazy or</p> <p>18 you don't know what you're doing?</p> <p>19 A. I -- I don't remember. Sorry.</p> <p>20 Q. When -- that's a pretty hefty accusation</p> <p>21 to lay on a county administration, isn't it?</p> <p>22 MR. GRANT BAKKE: Object to form.</p> <p>23 Q. (MR. NOEL CONTINUING) You're either lazy</p> <p>24 or you don't know what you're doing?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">198</p> <p>1 A. Correct.</p> <p>2 Q. And it is a November monthly report, and</p> <p>3 at the bottom of the first page of Exhibit 33 it</p> <p>4 says, "We completed the Rolette County Jail</p> <p>5 inspection and report this month, however we have</p> <p>6 been struggling with dishonesty and attention to</p> <p>7 matters, which need attention. We have another</p> <p>8 inspection scheduled to review the corrections and</p> <p>9 likely will need to pursue an order after this</p> <p>10 visit."</p> <p>11 Did I read that correctly?</p> <p>12 A. You did.</p> <p>13 Q. Do you remember coming out of December of</p> <p>14 2019 with an idea that your jail was at risk of</p> <p>15 getting an order of noncompliance?</p> <p>16 A. Was I aware of an order of noncompliance?</p> <p>17 Q. Yeah. Mr. Anderson talked about how he</p> <p>18 had concerns that he might have to take some --</p> <p>19 some drastic measures with regard to the Rolette</p> <p>20 County Jail in December of 2019.</p> <p>21 A. I would have been aware of the</p> <p>22 noncompliance. I don't ever remember, like, you</p> <p>23 need to do this or that or "we're going to shut you</p> <p>24 down" type thing. I don't --</p> <p>25 Q. How about --</p>
<p style="text-align: right;">197</p> <p>1 Q. Did you -- did you make an effort to --</p> <p>2 did you view that that he was correct about that,</p> <p>3 that there were things that needed to be fixed in</p> <p>4 that regard?</p> <p>5 A. I -- I don't know. It -- it was pretty</p> <p>6 insulting when it happened. But to try to answer</p> <p>7 your question, I guess, we -- any recommendation</p> <p>8 that they've given us or -- or noncompliance,</p> <p>9 we've -- we've worked to improve and --</p> <p>10 Q. Okay. You didn't find it so insulting</p> <p>11 that you decided we don't want to -- we don't want</p> <p>12 to do anything about it?</p> <p>13 A. We don't have the ability to do that.</p> <p>14 Q. Right. All right. Take a look at</p> <p>15 Exhibit 33.</p> <p>16 A. Okay.</p> <p>17 Q. Exhibit 33 is a memo this time from,</p> <p>18 again, Lance Anderson to Joseph Joyce. Who's</p> <p>19 Joyce?</p> <p>20 A. I believe that's Lance Anderson's boss</p> <p>21 or --</p> <p>22 Q. And --</p> <p>23 A. -- supervisor.</p> <p>24 Q. All right. And it's dated December 3 of</p> <p>25 2019 while you are the sheriff; correct?</p>	<p style="text-align: right;">199</p> <p>1 A. -- remember.</p> <p>2 Q. How about the dishonesty? Did -- did</p> <p>3 anyone from the DOCR ever encourage you or the</p> <p>4 county as you know it to be more straight with</p> <p>5 them?</p> <p>6 A. I talked to Mr. Werlinger, and he felt in</p> <p>7 years previous -- before I was sheriff, that he</p> <p>8 felt people were dishonest with him at our</p> <p>9 facility, before I was sheriff, and he wanted to</p> <p>10 give me that notice. I don't remember if it was</p> <p>11 this exact day or if it was the month before or</p> <p>12 exactly when it was that Mr. Werlinger and I had</p> <p>13 that conversation, but I do remember him saying</p> <p>14 that he felt -- and I -- I might be mixing this up</p> <p>15 because it was a while ago, but it was either Kim</p> <p>16 or Amber he didn't feel was being honest with him.</p> <p>17 Q. Okay. And what areas in particular were</p> <p>18 communicated to you as areas which needed</p> <p>19 attention?</p> <p>20 A. Oh, I -- I would have to go back and look</p> <p>21 at their -- their reports.</p> <p>22 Q. Well, would it have been one of the areas</p> <p>23 that the Rolette County Jail was identified in as</p> <p>24 being deficient in the 2019 inspection?</p> <p>25 MR. GRANT BAKKE: Object to form.</p>

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<p style="text-align: right;">200</p> <p>1 THE WITNESS: I -- I don't -- deficient?</p> <p>2 Are you talking --</p> <p>3 Q. (MR. NOEL CONTINUING) Noncompliant.</p> <p>4 A. -- noncompliant? Okay. Say that to me</p> <p>5 one more time.</p> <p>6 Q. Would the -- would the -- would the</p> <p>7 matters that needed attention be subjects that</p> <p>8 had -- that the Rolette County Jail had been found</p> <p>9 noncompliant with regard to standards?</p> <p>10 A. I'm --</p> <p>11 MR. GRANT BAKKE: Object to form.</p> <p>12 THE WITNESS: I'm assuming they would have</p> <p>13 been --</p> <p>14 Q. (MR. NOEL CONTINUING) All right.</p> <p>15 A. -- in there. I mean, they wouldn't say</p> <p>16 you need to fix stuff and then not tell us.</p> <p>17 Q. Then take a look at Exhibit 34.</p> <p>18 A. Okay.</p> <p>19 Q. Exhibit 34 is a memo from Lance Anderson</p> <p>20 to Joseph Joyce dated February 5 of 2020 and it's</p> <p>21 titled January Monthly report. And if you go to</p> <p>22 the second page, the second full paragraph down, it</p> <p>23 says, "Rolette County continues to be on monitoring</p> <p>24 and reclassified due to non-compliant practices and</p> <p>25 life safety issues. In addition, this month they</p>	<p style="text-align: right;">202</p> <p>1 MR. NOEL: Oh, yeah. Okay. All right.</p> <p>2 Let's flip the script.</p> <p>3 Q. (MR. NOEL CONTINUING) All right. Go to</p> <p>4 Exhibit 85.</p> <p>5 A. Okay.</p> <p>6 Q. All right. Now, when we get to</p> <p>7 Exhibit 55, we're at July 16 of --</p> <p>8 A. 55? I thought you said 85.</p> <p>9 Q. 85. Did I say 55 just now?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So if we get to 85, we're at</p> <p>12 July 16 of 2020; correct?</p> <p>13 A. Okay.</p> <p>14 Q. And let's rewind just into June of 2020.</p> <p>15 As the -- as the sheriff and jail administrator in</p> <p>16 June of 2020, did you believe that the facility was</p> <p>17 operating up to standard at that point in time?</p> <p>18 A. Did I believe the facility was running up</p> <p>19 to standards on this date?</p> <p>20 Q. In June of 2020 when Lacey went in there?</p> <p>21 A. Yes. No issues were ever brought to my</p> <p>22 attention.</p> <p>23 Q. All right. And then Exhibit -- well,</p> <p>24 let's do this one first, actually. Go back to</p> <p>25 Exhibit 65. Got it?</p>
<p style="text-align: right;">201</p> <p>1 terminated their newly appointed facility</p> <p>2 administrator. With this in mind we completed an</p> <p>3 unannounced monitoring inspection. There were no</p> <p>4 major issues identified based on this being</p> <p>5 unannounced visit, but the facility continues to</p> <p>6 need a lot of work."</p> <p>7 Did I read that correctly?</p> <p>8 A. You did.</p> <p>9 Q. Okay. And do you have any idea who they</p> <p>10 would be talking about when they say the newly</p> <p>11 appointed facility administrator was terminated?</p> <p>12 A. I -- that would have been Titus Whitebody.</p> <p>13 Q. Well, Titus -- this -- this memo is four</p> <p>14 months before Lacey died. Oh, sorry. This one has</p> <p>15 a typo. I'm -- that's a good thing Julie is here.</p> <p>16 A. Okay.</p> <p>17 Q. So it's supposed to be 2021. So you got</p> <p>18 me there. It's Titus Whitebody.</p> <p>19 A. Okay.</p> <p>20 Q. All right.</p> <p>21 A. You're trying to confuse me now.</p> <p>22 Q. No, I'm -- that wasn't intentional.</p> <p>23 A. I don't know.</p> <p>24 MR. GRANT BAKKE: Bottom paragraph of</p> <p>25 page 1, Andy, it sets it out.</p>	<p style="text-align: right;">203</p> <p>1 A. Yes.</p> <p>2 Q. All right. So the Exhibit 65 is the</p> <p>3 temporary closure order dated June 18 of 2020 after</p> <p>4 Lacey's death; correct?</p> <p>5 A. Yes.</p> <p>6 Q. And if you look at the last page,</p> <p>7 paragraph IX there, it says, in part, that the DOCR</p> <p>8 director has determined that Ramsey County LEC's</p> <p>9 noncompliance with North Dakota Correctional</p> <p>10 Facility Standards --</p> <p>11 MS. MORONEY: Rolette.</p> <p>12 Q. (MR. NOEL CONTINUING) Okay. Yeah.</p> <p>13 Rolette County's noncompliance with North Dakota</p> <p>14 Correctional Facility Standards presents a danger</p> <p>15 to the health and safety of inmates and justifies a</p> <p>16 temporary closure without issuance of a prior order</p> <p>17 of noncompliance, pending a full investigation;</p> <p>18 true?</p> <p>19 A. True.</p> <p>20 Q. And was it your -- was that explanation</p> <p>21 consistent with your understanding of why the DOCR</p> <p>22 was closing down the jail because it presented life</p> <p>23 safety issues and serious ones such that they</p> <p>24 needed to be fixed before it was reopened?</p> <p>25 A. Can you do that to me one more time?</p>

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<p style="text-align: right;">204</p> <p>1 Q. Yeah. Did the DOCR communicate to you</p> <p>2 that the --</p> <p>3 A. Okay.</p> <p>4 Q. -- Rolette County Jail had serious life</p> <p>5 safety concerns that needed to be fixed before it</p> <p>6 could be reopened after Lacey's death?</p> <p>7 A. Yes.</p> <p>8 Q. And if we go now to Exhibit 85 again, this</p> <p>9 is a letter to you from Dave Krabbenhoft; correct?</p> <p>10 A. Okay.</p> <p>11 Q. Why don't you take a minute just to read</p> <p>12 that to yourself and then I'll ask you a couple</p> <p>13 questions about it.</p> <p>14 A. Okay.</p> <p>15 Q. So it seems to me in July of 2010 [sic] --</p> <p>16 at least by July 10 of 2020, you wanted to get the</p> <p>17 jail reopened to a Grade 1 facility; fair?</p> <p>18 A. Correct.</p> <p>19 Q. And a Grade 1 facility is like the -- the</p> <p>20 top-ranking facility where you can keep them for,</p> <p>21 what, a year?</p> <p>22 A. Correct.</p> <p>23 Q. Why did you want to get back open within</p> <p>24 about a month of Lacey's death?</p> <p>25 A. They asked us our correction -- corrective</p>	<p style="text-align: right;">206</p> <p>1 Q. You had a lot of pressure on you from the</p> <p>2 commissioners already by July 10 of 2020 to get</p> <p>3 that jail reopened for financial reasons; correct?</p> <p>4 A. Correct.</p> <p>5 MR. GRANT BAKKE: Object to form.</p> <p>6 Q. (MR. NOEL CONTINUING) And the stated</p> <p>7 reason by Dave Krabbenhoft includes the -- an</p> <p>8 explanation that at least from the DOCR's</p> <p>9 perspective, the Rolette County violations were not</p> <p>10 limited and minor; correct?</p> <p>11 A. I believe that's what it says.</p> <p>12 Q. Okay. And then go next to Exhibit 86,</p> <p>13 please. For this one you have to go to the --</p> <p>14 start at the second page, which is -- excuse me --</p> <p>15 DOCR 1821. And do you see the -- do you see the</p> <p>16 email there to you from Krabbenhoft at the bottom?</p> <p>17 A. From -- from him to me.</p> <p>18 Q. Yeah.</p> <p>19 A. Correct.</p> <p>20 Q. It looks like he's attached the letter we</p> <p>21 just looked at; fair?</p> <p>22 A. Fair.</p> <p>23 Q. All right. And then at the bottom of the</p> <p>24 first page of Exhibit 86, on Monday, July 20, 12:59</p> <p>25 p.m., you write an email to Krabbenhoft; correct?</p>
<p style="text-align: right;">205</p> <p>1 plan. We provided that. Also, the financial of</p> <p>2 housing our inmates at other facilities, the</p> <p>3 transport of inmates, the lack of deputies that</p> <p>4 that would create for the road. The -- the</p> <p>5 commissioners were on me every day, when are you</p> <p>6 going to reopen, when are you going to reopen, when</p> <p>7 are you going to reopen. So I sent a -- a letter</p> <p>8 that said we've corrected our -- our steps; is that</p> <p>9 good enough to reopen.</p> <p>10 Q. Did you view that you had a good shot with</p> <p>11 the DOCR to get reopened by mid-July of 2020?</p> <p>12 A. I didn't have a -- a -- a good feeling,</p> <p>13 no.</p> <p>14 Q. All right.</p> <p>15 A. They -- they -- like I said, they hold the</p> <p>16 keys to the building and it -- they get the say --</p> <p>17 Q. Did any --</p> <p>18 A. -- or the ultimate say. Sorry.</p> <p>19 Q. No. That's okay. Did any of the Rolette</p> <p>20 County commissioners ever come to you and ask you</p> <p>21 if you managed to get the -- the life safety</p> <p>22 problems that the DOCR identified fixed?</p> <p>23 A. We -- we spoke. I don't remember if they</p> <p>24 asked that exact question. I know they asked</p> <p>25 questions. I just don't remember.</p>	<p style="text-align: right;">207</p> <p>1 A. I'm sorry. I was looking at the other</p> <p>2 document.</p> <p>3 Q. That's okay.</p> <p>4 A. I wrote an email to him --</p> <p>5 Q. Yeah. Exhibit 86, it starts at the very</p> <p>6 bottom. Monday, July 20, you write an email to</p> <p>7 Krabbenhoft, and the email's on the second page.</p> <p>8 A. Yeah. I guess I didn't see where -- okay.</p> <p>9 Okay. I was looking at the -- not the bottom.</p> <p>10 Q. Yeah.</p> <p>11 A. Okay. From me to him, correct.</p> <p>12 Q. All right. And take a minute, read this</p> <p>13 to yourself and I'll ask you a couple questions</p> <p>14 about it. And you tell me when you're ready.</p> <p>15 A. Okay.</p> <p>16 Q. So you point out a couple things to</p> <p>17 Krabbenhoft here, one of which is you feel like</p> <p>18 hire -- you strongly feel that hiring a new jail</p> <p>19 administrator to focus on jail and staff only will</p> <p>20 be a huge improvement; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And the county did not have something like</p> <p>23 that in place at this time; correct?</p> <p>24 A. Us -- we did not have a title as just jail</p> <p>25 administrator.</p>

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<p style="text-align: right;">208</p> <p>1 Q. Right. You did not have a dedicated jail 2 administrator just to focus on jail and staff and 3 jail staff only? 4 A. Yes. 5 Q. Okay. And then the two resignations of 6 correctional staff, that's Azure and Brunelle; 7 correct? 8 A. I believe so, yeah. 9 Q. And then you explain to Krabbenhoft the 10 financial predicament that you're in; correct? 11 A. Correct. 12 Q. Was it hard to hire a jail administrator 13 when Whitebody got hired? Did you have a lot of 14 applicants? Tell me a little bit about that. 15 A. We did have several applicants. How many 16 specific, I would have to go back and check, but it 17 was more than two. I -- the number I want to say 18 is five, but I -- don't quote me on that. 19 Q. Sure. 20 A. It was multiple people. The -- the hiring 21 process for Titus was almost pretty simple. What I 22 mean by that is he was the only one qualified that 23 applied. 24 Q. Okay. 25 A. None of the other ones -- I mean, I think</p>	<p style="text-align: right;">210</p> <p>1 Q. Okay. Look at the second page of 2 Exhibit 36. 3 A. Okay. 4 Q. And at the bottom paragraph says, "We 5 continue to work very closely with the Rolette 6 County Law Enforcement Center. We continue to work 7 through ensuring the facility is sending us 8 appropriate information daily and weekly. We also 9 found inmates staying for 4 days transferring out a 10 day then moving back to the facility for 4 11 additional days. This practice was stopped. They 12 continue to work through growing pains as old 13 culture is present and the new administrator is 14 trying to change things. This has been made worse 15 due to the administrator being on quarantine." 16 Did I read that last paragraph correctly? 17 A. Correct. 18 Q. And at this point in time, you must have 19 been open as, what, a Grade 3 or a Grade 4 20 facility? 21 A. I believe a Grade 4 is 24 hours. 22 Q. Okay. 23 A. And I believe the Grade 3 was -- was it 48 24 or 96? I can't quite remember. 25 Q. 96.</p>
<p style="text-align: right;">209</p> <p>1 we had a manager at Dairy Queen that applied -- 2 Q. That makes it easier. 3 A. -- Subway. So good manager experiences, 4 but not at the level I was looking for. 5 Q. Understood. Turn now to Exhibit 36, 6 please. 7 A. We're not going to go in order ever, are 8 we? 9 Q. No, unfortunately -- 10 A. Okay. 36. 11 Q. 36. Exhibit 36 is a memo from Anderson to 12 Joyce dated November 11, 2020, regarding October 13 Monthly report. Do you see that? 14 A. Yes, at the first page. 15 Q. All right. And you understand that these 16 are being generated because the -- the jail is 17 temporarily closed and they're trying to help you 18 guys get back to open? 19 MR. GRANT BAKKE: Objection. Calls for 20 speculation. 21 THE WITNESS: Can you say -- can you 22 repeat that? 23 Q. (MR. NOEL CONTINUING) Well, in -- by -- 24 by November -- when did the jail reopen? 25 A. I -- I don't remember.</p>	<p style="text-align: right;">211</p> <p>1 A. 96. Thank you. So we must have been in 2 a -- a Grade 3. 3 Q. And when we -- when we deposed 4 Mr. Anderson, he testified that the fact that the 5 Rolette County Jail was having people stay for four 6 days, transfer out a day and then come back in -- 7 A. Mm-hmm. 8 Q. -- appeared to be an attempt to circumvent 9 the grade classification that the jail was on at 10 that point in time. Did he communicate that to you 11 at all? 12 MR. GRANT BAKKE: Object as 13 mischaracterization. 14 THE WITNESS: I believe when he talked to 15 me, he said that -- that they were not going to 16 accept that and for us not to utilize that anymore. 17 Q. (MR. NOEL CONTINUING) Okay. Were you 18 aware that that process was going on, the four days 19 in, transfer, bring them back for four days? 20 A. I was aware, yes. 21 Q. Okay. Doesn't that seem like an attempt 22 to circumvent the Grade 3 classification to you? 23 A. Not the way that I read the -- the -- 24 the -- the -- the stuff, the paperwork, the -- we 25 could only hold them for four days. So if we</p>

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<p style="text-align: right;">212</p> <p>1 transferred them out a day, we weren't holding</p> <p>2 them. But, again, once Lance said that they didn't</p> <p>3 want that to happen, we stopped doing that</p> <p>4 immediately.</p> <p>5 Q. All right. What was -- we're not going to</p> <p>6 go through it in detail, but what -- and as you sit</p> <p>7 here today, what were the reasons for getting rid</p> <p>8 of Titus Whitebody?</p> <p>9 A. I believe there was several reasons. The</p> <p>10 main one was failure to comply -- to work within</p> <p>11 our budget. I think I stated this morning he came</p> <p>12 from a BIA facility that had almost unlimited</p> <p>13 resources, and coming to ours where we had very</p> <p>14 limited resources, that was new to him. Hard for</p> <p>15 him to get used to. I think one of the things he</p> <p>16 stated was he found a training that was a couple</p> <p>17 hours long for \$10,000, and I -- I said we -- we</p> <p>18 wouldn't be able to do that. We don't have \$10,000</p> <p>19 in our training budget, let alone just for a</p> <p>20 one-time -- and other issues that arose, there was</p> <p>21 a huge communication breakdown between him and I.</p> <p>22 There was missed work on his end. Falsifying</p> <p>23 some -- some timecards.</p> <p>24 He was a salaried employee, but he hired a</p> <p>25 personal assistant that we did not have budgeted</p>	<p style="text-align: right;">214</p> <p>1 feel this guy was -- towards the end was -- at</p> <p>2 first everything was great. He was doing the work.</p> <p>3 And then all of a sudden it just kind of stopped</p> <p>4 happening and he stopped showing up. And with</p> <p>5 DOCR, this was a very huge position, and I didn't</p> <p>6 feel we had the time to feel it out any longer.</p> <p>7 Q. It seems like you remember the Whitebody</p> <p>8 deal fairly well, so I want to ask you one specific</p> <p>9 about that. He -- he mentioned a -- an incident</p> <p>10 where an inmate had to be taken to the hospital,</p> <p>11 and he testified that he was trying to get in touch</p> <p>12 with you over the period of a few days because them</p> <p>13 needing somebody to watch the inmate at the</p> <p>14 hospital, essentially guard, was taking people away</p> <p>15 from the jail. And he testified that he was unable</p> <p>16 to reach you for a few days on that. Do you have</p> <p>17 any recollection of -- of that?</p> <p>18 A. I -- I remember himself and Pat Patnaude</p> <p>19 going down with -- and I don't remember the inmate,</p> <p>20 but the inmate had to be at the hospital for -- I</p> <p>21 believe it was Minot. I'm not a hundred percent</p> <p>22 sure on where the inmate went, but it was out of</p> <p>23 the area from Rolette County. And they had two</p> <p>24 people there, Titus and his assistant, and I</p> <p>25 believe his complaint was that they couldn't switch</p>
<p style="text-align: right;">213</p> <p>1 for without speaking with me. He also fired one of</p> <p>2 the hires that I had made before he came aboard,</p> <p>3 and I think that was an attempt to create space for</p> <p>4 his assistant, and he did that without consulting</p> <p>5 me.</p> <p>6 Q. Patrick?</p> <p>7 A. Pat Patnaude, correct. Yes. That's who</p> <p>8 he hired at his -- as his -- I call it personal</p> <p>9 assistant -- as his assistant. There was -- oh,</p> <p>10 there might have been a couple other things. I'm</p> <p>11 drawing a blank all of a sudden. I would say the</p> <p>12 big one would be the miscommunication, though. He</p> <p>13 told staff he would be out, and, again, I can't</p> <p>14 remember the exact --</p> <p>15 Q. Yep.</p> <p>16 A. -- time frame, but I'm going to be out for</p> <p>17 several days. And then two weeks went by and</p> <p>18 nobody could get ahold of him. And his comment</p> <p>19 was, Yeah, something came up. I had to stay, and</p> <p>20 I -- I don't know if he was in the New Town area or</p> <p>21 if he was out of state at that time. He -- he</p> <p>22 didn't really stay around our area all the time.</p> <p>23 He would travel.</p> <p>24 But the concerns I had was DOCR gave us</p> <p>25 several things that they wanted and -- and I didn't</p>	<p style="text-align: right;">215</p> <p>1 off. They were both there at the same time.</p> <p>2 I thought it could have been utilized</p> <p>3 better where if we were paying both of them to be</p> <p>4 down there, one could have been at the hotel</p> <p>5 resting while one was at the hospital and then</p> <p>6 switched for the duration of the inmate being</p> <p>7 there. They -- they wanted to drop him off and</p> <p>8 have somebody else go there so they could not be at</p> <p>9 the hospital --</p> <p>10 Q. All right.</p> <p>11 A. -- is the way I took it. If it was just</p> <p>12 him there, it would have been a different story.</p> <p>13 When there's two of them, I thought that was an</p> <p>14 easy two-man job.</p> <p>15 Q. Gotcha. And no jury's going to decide who</p> <p>16 was right about that situation, so I appreciate</p> <p>17 your side of the story.</p> <p>18 MR. NOEL: Let's mark that as the next</p> <p>19 one.</p> <p>20 (Deposition Exhibit 92 was marked for</p> <p>21 identification.)</p> <p>22 THE WITNESS: Thank you.</p> <p>23 MR. HANSON: What are we at?</p> <p>24 MR. NOEL: 92.</p> <p>25 Q. (MR. NOEL CONTINUING) All right. Sheriff</p>

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<p style="text-align: right;">216</p> <p>1 Gustafson, we're getting toward the end, at least</p> <p>2 for me. Exhibit 92 is an email that you sent to</p> <p>3 Anderson and Werlinger on January 18 of 2021, and</p> <p>4 the message to them was, "I'm curious what I could</p> <p>5 be" -- "what I could be doing to improve Rolette</p> <p>6 County Jail and myself. I would like to have a</p> <p>7 meeting by phone at your convenience to discuss any</p> <p>8 ideas. Thank you for your time."</p> <p>9 Do you remember sending that email?</p> <p>10 A. I really don't remember sending it, but</p> <p>11 I -- I mean, I -- I see my name on it and it --</p> <p>12 Q. Yep.</p> <p>13 A. -- it -- I -- yes. Yes.</p> <p>14 Q. Do you remember if anything came of this</p> <p>15 in terms of a phone call or a meeting?</p> <p>16 A. I do not recall.</p> <p>17 Q. And do you know if this -- this type of</p> <p>18 email where you're reaching out to the DOCR for</p> <p>19 help to try to improve the Rolette County Jail and</p> <p>20 yourself, did you ever send them any type of</p> <p>21 communication like that before June of 2020 that</p> <p>22 you recall?</p> <p>23 A. When I took office in January 1 of '19 is</p> <p>24 when I would have started communicating with</p> <p>25 them --</p>	<p style="text-align: right;">218</p> <p>1 A. In --</p> <p>2 Q. I'm not talking about Whitebody</p> <p>3 specifically.</p> <p>4 A. Okay.</p> <p>5 Q. I'm talking about the newly created</p> <p>6 dedicated jail administrator. Would you agree that</p> <p>7 having someone like that improved the operations of</p> <p>8 the jail?</p> <p>9 A. It improved, yes. Although, I -- I would</p> <p>10 say from -- from the other administrators such as</p> <p>11 myself and Kim that there wasn't a whole lot that</p> <p>12 changed. The person just had more time to watch,</p> <p>13 evaluate.</p> <p>14 Q. And there's been times when you've been</p> <p>15 both the sheriff and the jail administrator --</p> <p>16 A. Correct.</p> <p>17 Q. -- with the county. Which one of those</p> <p>18 two titles took up more of your time when you held</p> <p>19 them both?</p> <p>20 A. I haven't really separated -- well, my --</p> <p>21 the sheriff title, the way the umbrella works, you</p> <p>22 know, there's different things under there, so I've</p> <p>23 never really separated myself with those titles of,</p> <p>24 okay, today I'm sheriff and Tuesday I'm jail</p> <p>25 administrator, Wednesday I'm -- I never really did</p>
<p style="text-align: right;">217</p> <p>1 Q. Right.</p> <p>2 A. -- to -- I don't remember.</p> <p>3 Q. All right. Because at this point in time,</p> <p>4 the jail was not operating as a full Grade 1; fair?</p> <p>5 A. I believe so.</p> <p>6 Q. All right. And then when we get to</p> <p>7 Exhibit 93 --</p> <p>8 (Deposition Exhibit 93 was marked for</p> <p>9 identification.)</p> <p>10 MR. NOEL: It's a race to a hundred.</p> <p>11 Q. (MR. NOEL CONTINUING) Exhibit 93 is an</p> <p>12 email from Lance Anderson to David Krabbenhoft</p> <p>13 dated December 14, 2021, and this essentially</p> <p>14 allows the jail to reopen fully; fair?</p> <p>15 A. It -- did they reopen us to a Grade 1, you</p> <p>16 said?</p> <p>17 Q. I think so.</p> <p>18 A. Okay. I just didn't see him specifically</p> <p>19 say Grade 1, I -- but it seems fair. Yeah.</p> <p>20 Q. And they write -- Lance writes that one of</p> <p>21 the key factors allowing for this progress was the</p> <p>22 addition of an experienced administrator. Would</p> <p>23 you agree with that assessment, that that addition</p> <p>24 helped improve the operations of the Rolette County</p> <p>25 Jail?</p>	<p style="text-align: right;">219</p> <p>1 it that way. I just wore the multiple hats.</p> <p>2 Q. Did it take more of your -- did it take</p> <p>3 significantly more of your time and attention when</p> <p>4 you held both roles to fight crime versus deal with</p> <p>5 the conditions of the jail?</p> <p>6 A. I understand what you're getting at now.</p> <p>7 So it took more time away from -- I spend more time</p> <p>8 in the office now from -- from this to -- to now</p> <p>9 than I did my first year, if that makes sense. I</p> <p>10 was patrolling the road more then, but now I'm --</p> <p>11 I'm in my office, jeez, even on weekends sometimes.</p> <p>12 But just -- just even though I have</p> <p>13 department heads, chief deputy is in charge of my</p> <p>14 deputies. So instead of me watching all ten</p> <p>15 deputies, I'm -- I'm touching base with my chief</p> <p>16 deputy. And the same was going with my jail</p> <p>17 administrator. Instead of being in charge of all</p> <p>18 15 to -- 15 employees there, it was -- it's --</p> <p>19 today is different. Yes. It -- it's easier to</p> <p>20 watch 5 people than 50.</p> <p>21 Q. And specifically when you held both titles</p> <p>22 because sheriff -- sheriff and jail administrator</p> <p>23 are two very different jobs; fair?</p> <p>24 A. Yeah.</p> <p>25 MR. GRANT BAKKE: Object to form.</p>

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<p style="text-align: right;">220</p> <p>1 Q. (MR. NOEL CONTINUING) When you held both</p> <p>2 titles, which one took more of your time and</p> <p>3 attention?</p> <p>4 A. I don't think I got the ability to -- to</p> <p>5 separate them like that. I -- I was doing both.</p> <p>6 Q. All right.</p> <p>7 A. And, I mean, I'm -- even though I'm not</p> <p>8 the jail administrator now, I'm still doing both.</p> <p>9 Q. Got it. How's Jaime doing as jail</p> <p>10 administrator?</p> <p>11 A. I -- I feel he's doing a very good job.</p> <p>12 MR. NOEL: Okay. All right. That's all</p> <p>13 the questions I have for you.</p> <p>14 THE WITNESS: Everybody's surprised.</p> <p>15 MR. NOEL: I don't know.</p> <p>16 EXAMINATION</p> <p>17 BY MR. HANSON:</p> <p>18 Q. I just have a couple questions.</p> <p>19 A. Okay.</p> <p>20 Q. You had mentioned medical clearance a</p> <p>21 while back and had a question regarding medical</p> <p>22 clearance earlier today. I -- you're not medically</p> <p>23 trained; right?</p> <p>24 A. I am not. Well, I -- I am CPR certified.</p> <p>25 I'm AED. I -- I mean I have some training, yes --</p>	<p style="text-align: right;">222</p> <p>1 A. Correct.</p> <p>2 Q. And you have people -- I know you said</p> <p>3 that one of the problems in Rolette County is -- is</p> <p>4 that there's an overwhelming drug problem; right?</p> <p>5 A. Correct.</p> <p>6 Q. You see people that are arrested for</p> <p>7 various reasons that are either intoxicated by</p> <p>8 alcohol or drugs almost on a daily basis; true?</p> <p>9 A. True.</p> <p>10 Q. And regardless of medical clearance,</p> <p>11 whether they do or don't have medical clearance,</p> <p>12 you still have inmates that -- that come into the</p> <p>13 jail that are intoxicated by either drugs or</p> <p>14 alcohol; true?</p> <p>15 A. Yes.</p> <p>16 Q. And ultimately the decision about what to</p> <p>17 do with them is not up to the hospital. That's a</p> <p>18 decision that's made by your correctional officers</p> <p>19 based on their judgment at the time they see them;</p> <p>20 right?</p> <p>21 A. I --</p> <p>22 MR. GRANT BAKKE: Object to form.</p> <p>23 THE WITNESS: I don't think so be --</p> <p>24 because if we bring in an inmate to a -- a hospital</p> <p>25 or a clinic or -- or an ambulance and that -- if</p>
<p style="text-align: right;">221</p> <p>1 Q. Sure.</p> <p>2 A. -- but I -- I'm not a doctor.</p> <p>3 Q. Okay. And my -- my question is you're not</p> <p>4 opining on what's necessary for medical clearance.</p> <p>5 You'd leave that to someone else; right?</p> <p>6 A. Can you repeat that one more time? Sorry.</p> <p>7 Q. Sure. You're not expressing opinions on</p> <p>8 what's necessary for medical clearance. You'd</p> <p>9 leave that to somebody else that's trained to do</p> <p>10 that; right?</p> <p>11 A. Well, I -- if I was there and I thought</p> <p>12 somebody needed med -- if -- if I arrest somebody</p> <p>13 on the side of the road and they've been in a car</p> <p>14 accident, they need medical clearance. I know</p> <p>15 that.</p> <p>16 Q. Yeah. No. And I'm --</p> <p>17 A. I'm struggling at your question.</p> <p>18 Q. Let me make it clear. You make decisions</p> <p>19 as law enforcement whether somebody may need</p> <p>20 medical clearance; right?</p> <p>21 A. Correct.</p> <p>22 Q. But in terms of actually doing the medical</p> <p>23 clearance and what the doctor needs to do or not</p> <p>24 do, those are things you'd leave to the doctors and</p> <p>25 the hospital; right?</p>	<p style="text-align: right;">223</p> <p>1 the doctor says this person is not fit for jail,</p> <p>2 then we make other arrangements. We don't just</p> <p>3 bring them back to jail.</p> <p>4 Q. (MR. HANSON CONTINUING) Sure. If they</p> <p>5 decide that they're not fit for jail at that time,</p> <p>6 then they wouldn't leave the hospital; right?</p> <p>7 A. Correct. So if they --</p> <p>8 Q. But --</p> <p>9 A. -- say medically cleared, okay to be in</p> <p>10 jail, then we go back to jail.</p> <p>11 Q. Sure. But that doesn't change the fact</p> <p>12 that your correctional officers still do their own</p> <p>13 medical intake to evaluate whether they need</p> <p>14 certain kinds of watches and those kinds of things;</p> <p>15 right?</p> <p>16 A. Correct. It -- the doctor -- we -- it</p> <p>17 helps. It's not like the doctor says this person</p> <p>18 shouldn't be at jail -- and I know I'm categorizing</p> <p>19 it very bold -- and we say, nope, this person's got</p> <p>20 to come to jail. We listen to the doctors'</p> <p>21 direct --</p> <p>22 Q. Sure.</p> <p>23 A. -- directions.</p> <p>24 Q. You follow their directions --</p> <p>25 A. Yeah.</p>

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<p style="text-align: right;">224</p> <p>1 Q. -- right?</p> <p>2 A. Yes.</p> <p>3 Q. But in terms of what you do back at the</p> <p>4 jail, other than what the doctors may direct you to</p> <p>5 do, ultimately it's the correctional officers that</p> <p>6 are determining what happens next with the -- with</p> <p>7 what's happening to them at the jail; correct?</p> <p>8 A. Yes. They have the ability to keep</p> <p>9 assessing.</p> <p>10 Q. Because the hospital isn't making a</p> <p>11 judgment on how you categorize an inmate, for</p> <p>12 example; right?</p> <p>13 A. I don't understand.</p> <p>14 MR. GRANT BAKKE: Object to form. Calls</p> <p>15 for speculation.</p> <p>16 Q. (MR. HANSON CONTINUING) For instance, the</p> <p>17 hospital and the -- and the clinics don't tell you</p> <p>18 this is a patient that needs to be on special watch</p> <p>19 or lockdown or anything else. That's not something</p> <p>20 that they can do, can they?</p> <p>21 A. Yes and no. They don't know the</p> <p>22 procedures and policies of -- of the jail, but</p> <p>23 if -- when they give the direction, if it's -- and</p> <p>24 I guess this is kind of a -- maybe a bad example,</p> <p>25 but if the inmate is dehydrated, make sure you're</p>	<p style="text-align: right;">226</p> <p>1 questions asked of the inmate. They're actually</p> <p>2 questions that are observation on the part of</p> <p>3 the -- of the booking officer; right?</p> <p>4 A. Could be. I don't remember all the</p> <p>5 questions on there.</p> <p>6 Q. Okay.</p> <p>7 A. There's -- there's quite a few questions</p> <p>8 on there.</p> <p>9 Q. Right. Right. And there's some basically</p> <p>10 asking whether or not the officer sees something.</p> <p>11 Those should be answered based on the observation</p> <p>12 of the officer; correct?</p> <p>13 A. There -- there may. I don't remember that</p> <p>14 on there. I'm -- and it might be. I'm just -- I</p> <p>15 don't remember seeing that right now --</p> <p>16 Q. Okay.</p> <p>17 A. -- out of any of the stuff I've reviewed</p> <p>18 today.</p> <p>19 Q. So I think it's 48, if I remember right.</p> <p>20 A. Medical Assessment Information Sheet.</p> <p>21 Okay.</p> <p>22 Q. Yep. So if you see where it says Inmate</p> <p>23 Screening; do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Where it says, "Is inmate unconscious,"</p>
<p style="text-align: right;">225</p> <p>1 pushing fluids and make them drink water. This</p> <p>2 person has an open wound, we have to change</p> <p>3 bandage. We listen to those directions. And if</p> <p>4 there's nothing on there, it leads us to believe</p> <p>5 that that person is okay.</p> <p>6 Q. Okay. But you would follow the directions</p> <p>7 of the physicians that are put in the discharge</p> <p>8 papers; correct? That would be important for your</p> <p>9 correctional officers to do?</p> <p>10 A. Correct.</p> <p>11 Q. And you have an intake form -- medical</p> <p>12 intake form; true?</p> <p>13 A. Yes.</p> <p>14 Q. And I think we've heard from almost</p> <p>15 everybody, there's some disagreement, but it's the</p> <p>16 understanding that the correctional officer is to</p> <p>17 fill out that medical intake form at the time of</p> <p>18 booking; correct?</p> <p>19 A. Correct.</p> <p>20 Q. If they can.</p> <p>21 A. If they can, that's correct.</p> <p>22 Q. And they're supposed to fill it out at</p> <p>23 least to the extent they can; right?</p> <p>24 A. Correct.</p> <p>25 Q. Because there are some things that aren't</p>	<p style="text-align: right;">227</p> <p>1 obviously that's something that you don't have to</p> <p>2 ask the patient to determine, is it?</p> <p>3 A. Correct.</p> <p>4 Q. Do they have visible signs of trauma,</p> <p>5 illness, obvious pain or bleeding, requiring</p> <p>6 immediate emergency or doctor's care, again, that's</p> <p>7 in the judgment of the correctional officer;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Same with -- really as you go down that</p> <p>11 entire list of those things, those are all the</p> <p>12 judgment of the correctional officer; correct?</p> <p>13 A. Could be, yes.</p> <p>14 Q. If we go to the Medical Assessment</p> <p>15 Information Sheet, page 2, "Does the inmate appear</p> <p>16 to be disoriented or confused," again, that's the</p> <p>17 judgment of the correctional officer; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Have any physical deformities, again,</p> <p>20 that's something of the -- by the correctional</p> <p>21 officer; right?</p> <p>22 A. Yes.</p> <p>23 Q. Where it talks about does the inmate</p> <p>24 appear to be excessively thin or malnourished,</p> <p>25 again, those are observations by the correctional</p>

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<p style="text-align: right;">228</p> <p>1 officer?</p> <p>2 A. Same page, just down a little bit? Does</p> <p>3 the --</p> <p>4 Q. Just a little bit --</p> <p>5 A. Okay.</p> <p>6 Q. -- further down on page 2.</p> <p>7 A. Yes.</p> <p>8 Q. And if we go back up on page 1, under the</p> <p>9 Inmate Screening area, "Does the inmate appear to</p> <p>10 be under influence of drugs or alcohol," again,</p> <p>11 that's something that -- that's observed by the</p> <p>12 correctional officer; correct?</p> <p>13 A. Could be, yeah. Could -- yeah. Yeah.</p> <p>14 Q. Is there anyone else that would fill that</p> <p>15 out?</p> <p>16 A. No. No. Not that would fill it out, no.</p> <p>17 Q. So all of those things are -- are in the</p> <p>18 judgment of the correctional officer as they're</p> <p>19 booking the inmate; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And one of the reasons that you do</p> <p>22 periodic checks, whether it's hourly or 15-minute,</p> <p>23 is because an inmate's condition can change over</p> <p>24 time; correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">230</p> <p>1 25 times.</p> <p>2 THE WITNESS: No, I wasn't.</p> <p>3 Q. (MR. GRANT BAKKE CONTINUING) And those</p> <p>4 videos didn't have any audio playing when you</p> <p>5 watched them today --</p> <p>6 A. No.</p> <p>7 Q. -- right?</p> <p>8 So you don't know what the content of any</p> <p>9 conversations that were occurring between any</p> <p>10 people shown on those videos might have been?</p> <p>11 A. I don't know. Correct.</p> <p>12 Q. Do you have Exhibit 29?</p> <p>13 A. I do.</p> <p>14 Q. You were asked some questions about this</p> <p>15 exhibit earlier today. Do you remember that?</p> <p>16 A. I -- I believe there was a discrepancy on</p> <p>17 the -- whether I was the administrator or not.</p> <p>18 Q. So this Exhibit 29 is the October 2019</p> <p>19 inspection -- annual inspection from the DOCR in</p> <p>20 Rolette County; right?</p> <p>21 A. Correct.</p> <p>22 Q. Who was the jail administrator at the</p> <p>23 Rolette County Jail in October 2019?</p> <p>24 A. Would have been Kim. I did not take over</p> <p>25 till December.</p>
<p style="text-align: right;">229</p> <p>1 Q. And by scheduling them either hourly or by</p> <p>2 15-minute, it provides greater continuity of -- of</p> <p>3 observation so that there isn't too far in between</p> <p>4 that that particular inmate is being observed in</p> <p>5 case something is changing; true?</p> <p>6 A. Can you repeat that, please?</p> <p>7 Q. That was a bad question. Yeah.</p> <p>8 The reason that you have hourly or</p> <p>9 15-minute checks is that inmates' conditions can</p> <p>10 change and you want to know that on a periodic</p> <p>11 basis rather than go eight hours without anyone</p> <p>12 checking; right?</p> <p>13 A. Correct.</p> <p>14 MR. HANSON: I don't think I have anything</p> <p>15 else. Thank you.</p> <p>16 EXAMINATION</p> <p>17 BY MR. GRANT BAKKE:</p> <p>18 Q. Sheriff, you were shown some videos</p> <p>19 earlier today of Ms. Higdem in the jail cell and</p> <p>20 the mezzanine area outside that cell. Do you</p> <p>21 remember that?</p> <p>22 A. Yes.</p> <p>23 Q. Were you physically present at the jail</p> <p>24 during the time depicted on those videos?</p> <p>25 MR. NOEL: Objection. Asked and answered</p>	<p style="text-align: right;">231</p> <p>1 Q. So when -- during the DOCR's 2019</p> <p>2 inspection, would they be dealing more with Kim?</p> <p>3 A. Correct. I would only have been part of</p> <p>4 the closeout, not the entire inspection.</p> <p>5 Q. Do you have Exhibit 33?</p> <p>6 A. I do.</p> <p>7 Q. Do you remember being asked questions</p> <p>8 about this exhibit?</p> <p>9 A. I do.</p> <p>10 Q. And this is a memo from Lance Anderson to</p> <p>11 Joseph Joyce dated December 3, 2019. Does that</p> <p>12 look right?</p> <p>13 A. Correct.</p> <p>14 Q. And then the bottom of the first page</p> <p>15 discusses Rolette County, and I think you were</p> <p>16 asked some questions about Mr. Anderson's written</p> <p>17 statement about struggling with dishonesty. Do you</p> <p>18 remember those questions?</p> <p>19 A. Correct. Yes. Sorry.</p> <p>20 Q. At -- at the time of this -- or excuse me.</p> <p>21 You know, this -- this memo shows that --</p> <p>22 if you look at the first sentence of -- of every</p> <p>23 paragraph, that it says "the annual inspection</p> <p>24 completed this month" from McLean County, Barnes</p> <p>25 County, Rolette County. Do you see that?</p>

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<p style="text-align: right;">232</p> <p>1 A. Yes.</p> <p>2 Q. So it appears that perhaps this -- these</p> <p>3 inspections were -- were done in November 2019</p> <p>4 given that the date of the memo is December 3,</p> <p>5 2019?</p> <p>6 A. That -- that could be it. Yeah. It could</p> <p>7 have been a month before too.</p> <p>8 Q. How -- how long does a jail -- when the</p> <p>9 DOCR would come for annual inspections when you</p> <p>10 were jail administrator, how long would an</p> <p>11 inspection take?</p> <p>12 A. I -- I believe it was two days. It was</p> <p>13 longer than a day. It wasn't five days, but I want</p> <p>14 to say two. It might -- I don't think it was</p> <p>15 three.</p> <p>16 Q. Is your understanding, looking at</p> <p>17 Mr. Anderson's statement about the Rolette County</p> <p>18 Jail inspection, that he is referring to the time</p> <p>19 when Kim was the administrator, not you?</p> <p>20 A. Are we -- we're talking about when it says</p> <p>21 "struggling with dishonesty"?</p> <p>22 Q. Yes.</p> <p>23 A. Yes. That would have been before me.</p> <p>24 Q. Okay. And then if we look at the last</p> <p>25 sentence of that paragraph, "We have another</p>	<p style="text-align: right;">234</p> <p>1 Q. And looking at Exhibit 82, it says that</p> <p>2 the sheriff is now assuming the duties of the RCLEC</p> <p>3 administrator. Do you see that in the second</p> <p>4 paragraph towards the end?</p> <p>5 A. Yes.</p> <p>6 Q. And then the last paragraph says,</p> <p>7 "Upon" --</p> <p>8 MR. NOEL: What exhibit is this? I'm</p> <p>9 sorry.</p> <p>10 MR. GRANT BAKKE: 82.</p> <p>11 MR. NOEL: Thanks.</p> <p>12 Q. (MR. GRANT BAKKE CONTINUING) "Upon</p> <p>13 completion of this visit, the North Dakota</p> <p>14 Department of Corrections and Rehabilitation</p> <p>15 Inspector determined no further action was needed</p> <p>16 the present time."</p> <p>17 Did I read that correctly?</p> <p>18 A. Correct.</p> <p>19 Q. So was you assuming duties of</p> <p>20 administrator, is it your understanding that you</p> <p>21 then show -- showed the changes you would make to</p> <p>22 Lance Anderson at this -- at this visit?</p> <p>23 MR. NOEL: Object to form.</p> <p>24 THE WITNESS: Correct.</p> <p>25 Q. (MR. GRANT BAKKE CONTINUING) Do you have</p>
<p style="text-align: right;">233</p> <p>1 inspection scheduled to review the corrections and</p> <p>2 likely will need to pursue an order after this</p> <p>3 visit."</p> <p>4 Did I read that correctly?</p> <p>5 A. Correct.</p> <p>6 Q. And can you turn to Exhibit 82, please.</p> <p>7 A. Okay.</p> <p>8 Q. And it appears this is a memorandum from</p> <p>9 Lance Anderson dated December 11, 2019; is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. So eight days after the previous exhibit</p> <p>13 memorandum from Mr. Anderson that we just reviewed?</p> <p>14 A. I believe that's what it was.</p> <p>15 Q. And can you just read the content of this</p> <p>16 memorandum to yourself? Let me know when you're</p> <p>17 done.</p> <p>18 A. And we're talking about 82; correct?</p> <p>19 Q. Yes.</p> <p>20 A. Okay. Okay.</p> <p>21 Q. And the exhibit that we looked at just</p> <p>22 before this, 33, do you remember that the memo said</p> <p>23 that we will likely need to pursue an order after</p> <p>24 this visit against Rolette County?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">235</p> <p>1 any -- do you have any recollection of the visit</p> <p>2 that Mr. Anderson is talking about in Exhibit 82?</p> <p>3 A. Off the top of my head, I do not.</p> <p>4 Q. Do you remember informing Mr. Anderson</p> <p>5 that you would be taking over as the jail</p> <p>6 administrator from Kim?</p> <p>7 A. Yes. And I -- I don't remember if that</p> <p>8 was by phone call or if it was by email that Kim no</p> <p>9 longer wanted it and -- and I would be taking it.</p> <p>10 Q. And did Mr. Anderson come for a visit to</p> <p>11 the jail very soon after you became the jail</p> <p>12 administrator?</p> <p>13 A. I believe so.</p> <p>14 Q. And is it your belief the 82 -- Exhibit 82</p> <p>15 describes that visit?</p> <p>16 A. Yes.</p> <p>17 Q. And eight days after putting in his memo</p> <p>18 that an order would likely be pursued against</p> <p>19 Rolette County Jail, it appears Mr. Anderson</p> <p>20 changed his mind and determined that no further</p> <p>21 action was needed --</p> <p>22 MR. NOEL: Object --</p> <p>23 Q. (MR. GRANT BAKKE CONTINUING) -- at the</p> <p>24 present time?</p> <p>25 MR. NOEL: Object to form.</p>

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<p style="text-align: right;">236</p> <p>1 THE WITNESS: That's the way I'm reading</p> <p>2 it.</p> <p>3 Q. (MR. GRANT BAKKE CONTINUING) And then</p> <p>4 following this December 11, 2019, the events</p> <p>5 described in that memorandum, is it your</p> <p>6 understanding that Rolette County was not on any</p> <p>7 kind of corrective action from DOCR or any</p> <p>8 probationary period?</p> <p>9 A. Not that I recall.</p> <p>10 (Deposition Exhibit 94 was marked for</p> <p>11 identification.)</p> <p>12 THE WITNESS: Thank you.</p> <p>13 Q. (MR. GRANT BAKKE CONTINUING) Showing you</p> <p>14 what's been marked as Exhibit No. 94, do you</p> <p>15 recognize this document?</p> <p>16 A. I -- I don't.</p> <p>17 Q. I'll represent to you that it was received</p> <p>18 from the Department of Corrections in this case,</p> <p>19 and yesterday Mr. Anderson testified that he</p> <p>20 believes Bob Werlinger interviewed the other female</p> <p>21 inmates that were present at the jail when Lacey</p> <p>22 was.</p> <p>23 A. Okay.</p> <p>24 Q. And if you look at the -- kind of the</p> <p>25 start of the second paragraph where it says, "Staff</p>	<p style="text-align: right;">238</p> <p>1 A. Yeah. That's what it reads here -- or</p> <p>2 that's -- that's what I'm getting out of this.</p> <p>3 Q. And then at the -- this second-to-last</p> <p>4 paragraph says, "Yes, did you talk to her?" And</p> <p>5 Tara appears to say, "I don't know"?</p> <p>6 A. Correct.</p> <p>7 Q. And then the last sentence says,</p> <p>8 "Summary," equals, "I concluded this interview with</p> <p>9 Tara Willard due to her strange behavior and her</p> <p>10 inability to answer questions."</p> <p>11 Have I read that correctly?</p> <p>12 A. Correct.</p> <p>13 Q. Did the inspector who did this interview</p> <p>14 bring to you any concerns about Ms. Willard's</p> <p>15 strange behavior and inability to answer questions?</p> <p>16 A. No.</p> <p>17 MR. GRANT BAKKE: That's all I have.</p> <p>18 Thank you.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. NOEL:</p> <p>21 Q. Go look at Exhibit --</p> <p>22 MR. NOEL: Which one was the big manual</p> <p>23 again?</p> <p>24 MS. MORONEY: 91.</p> <p>25 MR. NOEL: 91. I got started looking for</p>
<p style="text-align: right;">237</p> <p>1 interview with inmate Tara Willard." Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. And then it -- it says, I believe, in the</p> <p>5 top -- top paragraph, "The interview referenced in</p> <p>6 this report are the summation of the oral statement</p> <p>7 provided to this inspector."</p> <p>8 And would Bob Werlinger be -- would his</p> <p>9 title be inspector?</p> <p>10 A. I don't recall.</p> <p>11 Q. In any event, he -- the staff interview</p> <p>12 states, "How long have you been here?" And then</p> <p>13 Tara appears to have answered, "Don't know."</p> <p>14 Is that correct?</p> <p>15 A. That's what I'm reading, yes.</p> <p>16 Q. And then it goes on, "Do you know Lacey</p> <p>17 Higdem? And Tara apparently says, "Who is that?"</p> <p>18 Is -- have I read that correctly?</p> <p>19 A. Correct.</p> <p>20 Q. And it appears that Tara doesn't know if</p> <p>21 she talked to Lacey?</p> <p>22 MR. NOEL: Object to form and foundation.</p> <p>23 We could save this for Willard's deposition.</p> <p>24 Q. (MR. GRANT BAKKE CONTINUING) You can</p> <p>25 answer.</p>	<p style="text-align: right;">239</p> <p>1 something else.</p> <p>2 Q. (MR. NOEL CONTINUING) And then go to</p> <p>3 page -- for the Bates stamp -- we already talked</p> <p>4 about this one -- it's RC0204 of Exhibit 91.</p> <p>5 A. 0204?</p> <p>6 Q. Yep.</p> <p>7 A. Okay.</p> <p>8 Q. And if we look at the Reevaluation Date --</p> <p>9 if you're there, tell me.</p> <p>10 A. Go ahead.</p> <p>11 Q. Okay. So it's got Reevaluation Date,</p> <p>12 September 16, 2019, by you the jail administrator;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And when we looked at Exhibit 82 --</p> <p>16 A. Oh, boy.</p> <p>17 Q. -- it -- I don't think you're going to</p> <p>18 need.</p> <p>19 A. I got it.</p> <p>20 Q. It looks to me like you became the jail</p> <p>21 administrator about five days before Policy 1.10</p> <p>22 was reevaluated; correct?</p> <p>23 A. I would have to go back and look. That's</p> <p>24 just when we -- reevaluation of the policy date,</p> <p>25 not when I became jail administrator.</p>

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<p style="text-align: right;">240</p> <p>1 Q. Okay. So when we look at Exhibit 82, at</p> <p>2 least by December 11 of 2019, you are now the jail</p> <p>3 administrator and Kim is not; correct?</p> <p>4 A. I believe so.</p> <p>5 Q. All right. Do you know when you</p> <p>6 officially took over for her?</p> <p>7 A. The -- the date I don't -- I just know it</p> <p>8 was December.</p> <p>9 Q. All right.</p> <p>10 A. I don't recall a specific date.</p> <p>11 Q. All right. So how long did it take you to</p> <p>12 do a comprehensive review of the jail policy and</p> <p>13 procedure manual after you became the jail</p> <p>14 administrator?</p> <p>15 A. I don't recall.</p> <p>16 Q. Is that something you felt you had to do</p> <p>17 when you became jail administrator?</p> <p>18 A. Yes. So if -- if Kim was the jail</p> <p>19 administrator in '19 -- or '18, let's say, and I</p> <p>20 became the administrator in '20, we can't have her</p> <p>21 listed as the jail administrator on policies.</p> <p>22 Q. But that's not what I was getting at.</p> <p>23 A. Oh.</p> <p>24 Q. When you took over for Kim as jail</p> <p>25 administrator in December of 2019, was that the</p>	<p style="text-align: right;">242</p> <p>1 the latest court cases or changes to the -- to the</p> <p>2 North Dakota rules? What did you read it with --</p> <p>3 with an eye toward?</p> <p>4 A. I guess I don't -- I don't remember that</p> <p>5 part.</p> <p>6 Q. And as sheriff, you could have made</p> <p>7 changes to the jail policy and procedure manual</p> <p>8 too; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And as sheriff, you could have made</p> <p>11 changes to correctional officer training just like</p> <p>12 a jail administrator could; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Was Kim Nadeau a bad jail administrator?</p> <p>15 A. I didn't feel so.</p> <p>16 Q. Okay. Did you feel like she was a</p> <p>17 dishonest person?</p> <p>18 A. I've never felt that about her, no.</p> <p>19 Q. Did any part of your examination into the</p> <p>20 Higdem incident lead you to think that Kim Nadeau</p> <p>21 did something wrong?</p> <p>22 A. No.</p> <p>23 Q. Do you know if Kim Nadeau was there that</p> <p>24 day when Lacey was there, 6 a.m. to -- 6 p.m. to</p> <p>25 6 a.m.?</p>
<p style="text-align: right;">241</p> <p>1 first time you had been Rolette County jail</p> <p>2 administrator?</p> <p>3 A. I believe so.</p> <p>4 Q. Okay. When you took on that job, did you</p> <p>5 do a comprehensive review of the Rolette County</p> <p>6 policy -- jail policy and procedure manual?</p> <p>7 A. I -- I read through the policy the day of</p> <p>8 election.</p> <p>9 Q. Okay. Do we need to -- is one of the jobs</p> <p>10 of a jail administrator at Rolette County to make</p> <p>11 sure that all of the jail policies and procedures</p> <p>12 are up to standard?</p> <p>13 A. Is that one of the -- yeah. That'd be one</p> <p>14 of the jail admini --</p> <p>15 Q. Did you ever do a comprehensive review of</p> <p>16 the Rolette County jail policy and procedure manual</p> <p>17 after you became jail administrator for the first</p> <p>18 time?</p> <p>19 A. With others or with myself?</p> <p>20 Q. I don't know.</p> <p>21 A. I -- well, I tried to --</p> <p>22 Q. Either one.</p> <p>23 A. Yeah, I've read through it. Yeah.</p> <p>24 Q. Okay. And did you read through it with an</p> <p>25 eye toward change -- making changes to comply with</p>	<p style="text-align: right;">243</p> <p>1 A. I'm sorry?</p> <p>2 Q. Do you know if Kim Nadeau would have been</p> <p>3 at the jail from 6 p.m. to 6 a.m.?</p> <p>4 A. So -- okay. I thought you said</p> <p>5 6 a.m. to --</p> <p>6 Q. I did.</p> <p>7 A. So she works day shift, but -- Monday</p> <p>8 through Friday, but so coming in at 6 p.m. she</p> <p>9 would not have been there.</p> <p>10 Q. Okay. Do you get the sense from anybody</p> <p>11 working for Rolette County that they're trying to</p> <p>12 lay the hat on Kim Nadeau for Lacey Higdem's death?</p> <p>13 A. I -- no.</p> <p>14 Q. That wouldn't make any sense to you, would</p> <p>15 it?</p> <p>16 A. Maybe I'm not understanding your question.</p> <p>17 Q. Do you get the sense from anybody working</p> <p>18 for Rolette County that they're trying to lay the</p> <p>19 hat on Kim Nadeau --</p> <p>20 A. I've never --</p> <p>21 Q. -- for Lacey Higdem's death?</p> <p>22 A. I've never had that expressed to me, no.</p> <p>23 Q. And what about -- we've had some testimony</p> <p>24 about after April did the underwear change and she</p> <p>25 came down, she had a feeling that Lacey should go</p>

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<p style="text-align: right;">244</p> <p>1 to the hospital. She testified to that.</p> <p>2 MR. GRANT BAKKE: Object as a</p> <p>3 mischaracterization.</p> <p>4 Q. (MR. NOEL CONTINUING) Did you ever -- did</p> <p>5 April ever communicate that to you?</p> <p>6 MR. GRANT BAKKE: Same objection.</p> <p>7 THE WITNESS: Not that I remember.</p> <p>8 Q. (MR. NOEL CONTINUING) Okay. Did anyone</p> <p>9 communicate to you that there was a discussion or a</p> <p>10 give-and-take between April and Myles as to whether</p> <p>11 or not Lacey should go to the hospital during their</p> <p>12 shift?</p> <p>13 A. I don't remember anybody bringing that up</p> <p>14 to me either.</p> <p>15 Q. Okay. Did anyone bring up to you that Kim</p> <p>16 Nadeau had vetoed a correctional officer's desire</p> <p>17 to bring Lacey to the hospital on June 3 or 4 of</p> <p>18 2020?</p> <p>19 A. No, I don't think that was ever told to</p> <p>20 me.</p> <p>21 Q. Would it make any sense to you at all as a</p> <p>22 sheriff or a jail administrator that a jail</p> <p>23 administrator sitting at home would veto a</p> <p>24 correctional officer's desire to bring an inmate to</p> <p>25 the hospital? Does that make any sense to you?</p>	<p style="text-align: right;">246</p> <p>1 CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC</p> <p>2</p> <p>3</p> <p>4 STATE OF NORTH DAKOTA)</p> <p>5) ss.</p> <p>6 COUNTY OF BURLEIGH)</p> <p>7</p> <p>8 I, Stephanie A. Smith, a Registered</p> <p>9 Professional Reporter and a Notary Public duly</p> <p>10 commissioned and qualified in and for the County of</p> <p>11 Burleigh, State of North Dakota,</p> <p>12</p> <p>13 DO HEREBY CERTIFY that, pursuant to notice</p> <p>14 or agreement, there came before me at the time and</p> <p>15 place hereinbefore indicated the named witness, who</p> <p>16 was by me duly sworn to testify to the truth and</p> <p>17 nothing but the truth touching and concerning the</p> <p>18 matter in controversy in this cause; that said</p> <p>19 witness was thereupon examined under oath and said</p> <p>20 examination reduced to writing by me; that the</p> <p>21 foregoing and attached typewritten pages contain a</p> <p>22 full, true, accurate and correct transcript of my</p> <p>23 shorthand notes, as they purport to contain, then</p> <p>24 and there taken; and that the reading and signing</p> <p>25 of the deposition were expressly waived by the</p> <p>witness and respective counsel.</p> <p>16 I DO HEREBY FURTHER CERTIFY that I am</p> <p>17 neither attorney or counsel for, nor related to or</p> <p>18 employed by, any of the parties to the action in</p> <p>19 which this deposition is taken; and, further, that</p> <p>20 I am not a relative or employee of any attorney or</p> <p>21 counsel employed by the parties hereto or</p> <p>22 financially interested in the action.</p> <p>23</p> <p>24 IN WITNESS WHEREOF I have hereunto set my</p> <p>25 hand and affixed my notarial seal this 3rd day of</p> <p>May, 2024.</p> <p>22 _____</p> <p>23 Stephanie A. Smith</p> <p>24 Court Reporter and Notary Public</p> <p>25 Burleigh County, Bismarck, N.D.</p> <p>My Commission expires: 6-19-26</p>
<p style="text-align: right;">245</p> <p>1 A. No.</p> <p>2 MR. NOEL: All right. That's all I have.</p> <p>3 MR. HANSON: Nothing further.</p> <p>4 MR. GRANT BAKKE: Sheriff, you have the</p> <p>5 right to read and sign your deposition transcript</p> <p>6 after it's been typed up and you have a chance to</p> <p>7 review it if you would like for any errors, or you</p> <p>8 can waive that right and you don't have to read</p> <p>9 through it and sign it. Which would you prefer to</p> <p>10 do?</p> <p>11 THE WITNESS: I'll waive my right.</p> <p>12 MR. GRANT BAKKE: Perfect. Thank you.</p> <p>13 THE VIDEOGRAPHER: This is the end of the</p> <p>14 audiovisual deposition of Sheriff Nathan Gustafson</p> <p>15 taken on April 12, 2024, in Bismarck, North Dakota.</p> <p>16 We are off the record at 3:41 p.m.</p> <p>17 (Concluded at 3:41 p.m., the same day.)</p> <p>18 -----</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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